

Chapter 4

Programmatic Analysis and Tiering

This chapter includes six main sections: Programmatic Analysis and Tiering General, Programmatic Analysis, Tiering, Methods to Avoid Duplication in Programmatic and Tiered Analysis, Examples of Programmatic Analysis, and Barriers to Effective Use of Programmatic Analysis.

Programmatic Analysis and Tiering General

Summary

Many respondents who address the relationship between programmatic and tiered project level analysis conclude that these two types of analysis remain a necessity due to inherent scale considerations. Some point out that such multi-phase analysis allows the evaluation of broader-scale cumulative and combined effects analysis at programmatic level and detailed, finer scale analysis at the project level. “There is no way to get around it, you must continue to require NEPA analysis at both the programmatic and project levels,” concludes one individual. Some respondents, however, doubt the value in programmatic level analysis and suggest that its use be vastly reduced or eliminated in favor of project-level analysis.

Among those respondents who believe that both levels of analysis should be retained in the NEPA regulations, many suggest that the Task Force clarify how these analyses should be conducted. These respondents often contend that such clarification would improve both financial efficiency and information quality. Some suggest that the Task Force should better define the relationship between the two levels of analysis. Others request that the Task Force issue more specific criteria based on temporal, scale, and risk factors to help planners determine the appropriate levels of analysis and detail needed for a particular planning activity.

810. Public Concern: The CEQ Task Force should continue to require NEPA analysis at both programmatic and project levels.

There is no way to get around it, you must continue to require NEPA analysis at both the programmatic and project levels. The programmatic level is where larger-scale, combined effects and cumulative effects can be evaluated and addressed, where overall management objectives are defined, and where the public can have a greater role. The project level is where the analysis of the effects of that particular action, in that place, at that time are addressed. You cannot do an adequate combined and cumulative effects analysis over broader temporal and spatial scales, at the project level; and you cannot to an adequate analysis of all the specific effects on various resources, at particular time and place, of each potential action covered under a program. (Individual, No Address - #562.1.40100.C1)

National Park Conservation Association believes that, in order to comply with both the letter and spirit of the law, it is often necessary to prepare both programmatic and action-specific analyses. For example, the National Park Service is preparing an environmental analysis on the potential impacts of bioprospecting agreements. While the organization believes this programmatic review is appropriate, it should not substitute for a complete analysis of the impacts of such arrangements on the resources at each park participating in these agreements. Of course analysis that is common to both analyses will not need to be duplicated. (Preservation/Conservation Organization, Washington, DC - #539.12.40000.XX)

We support the use of programmatic and tiered analyses where appropriate
(Preservation/Conservation Organization, Boise, ID - #570.2.10200.XX)

811. Public Concern: The CEQ Task Force should reemphasize that programmatic analysis and tiering can conserve federal planning resources.

Although the goal of programmatic analyses and tiering are essential for common sense management, this tool is proving to be highly ineffective. Because of challenges to virtually every proposed action for development of federal oil and gas resources, agencies have not been able to truly tier documents off of one another. Instead, agencies most often produce environmental assessments that resemble either programmatic analyses or more closely resemble environmental impact statements. The Task Force should re-emphasize that tiering is not only permissible, but that it is desirable as a way to avoid unnecessarily taxing the limited federal resources that are available to prepare these analyses. Once a finding has been made, it need not be re-examined, unless resource conditions or management direction have significantly changed. Moreover, it should be emphasized that as documents are tiered off of one another, the subsequent documents should become more concise, which is certainly not the case now. (Oil, Natural Gas, or Coal Industry, No Address, - #634.4.40100.C1)

812. Public Concern: The CEQ Task Force should define the relationship between programmatic and tiered analysis.

I strongly urge that the NEPA task force use this opportunity to better define the connection between over-arching plans and individual projects, to provide for a seamless process of public involvement, thereby possibly unlocking the potential for truly collaborative and adaptive resource management. (Individual, Logan, UT - #383.3.40110.XX)

SHOULD EXAMINE WHETHER CEQ REGULATIONS SHOULD APPLY DIFFERENTLY FOR PROGRAMMATIC VERSUS SITE-SPECIFIC DECISIONS

It would be helpful for the task force to examine whether the CEQ regulations should apply requirements differently for programmatic vs. site-specific decisions so agencies can more productively use programmatic options. (United States Department of Agriculture, Washington, DC - #110.10.40500.XX)

813. Public Concern: The CEQ Task Force should provide guidance on the appropriate use of programmatic and tiered analysis.

SHOULD BASE THE APPROPRIATE LEVEL OF ANALYSIS ON DEGREES OF TIME, AREA, AND POTENTIAL EFFECTS

The deciding factors to determine which type or level of analysis is appropriate would be mainly degrees of time, area, and potential impacts. Programmatic level EISs would include analysis of the combined effects of the program if ALL the possible actions allowed under the plan were accomplished, plus cumulative effects analysis of incremental actions and combined effects across the broader geographical area; including analysis of combined effects with other programs in adjacent areas. This analysis would require more theoretical analysis and some reasonable predictions. Smaller, project level analyses would cover only the effects of the particular action, at that place and time, and in association only with other known projects also localized over time and space. (Individual, No Address - #562.2.40110.C1)

SHOULD DEFINE THE TYPE, SCALE AND SCOPE OF DECISIONS APPROPRIATELY ADDRESSED BY PROGRAMMATIC ANALYSIS

NEPA regulations should more clearly spell out the type, scale, and scope of decisions that should be addressed in programmatic analyses. These could include land management allocation decisions such as those made in Land and Resource Management Plans (forest plans). To address broader geographic issues, ecoregion assessments like the FEMAT, SNEP and ICBEMP have proven useful as scientific assessments, but many believe they are less useful and too broad in scope to support most decisions at such a broad scale. If an analysis at the broader decision level (i.e., forest plan) cannot effectively

disclose the impacts of a proposed action, then the issue should instead be analyzed and addressed at the next lower (project) level of decision-making. (Other, Washington, DC - #587.17.40100.C1)

SHOULD ONLY USE PROGRAMMATIC AND TIERED ANALYSIS FOR PROJECTS WHOSE SCOPE AND SCALE SPECIFICALLY DEMAND SUCH ANALYSIS

Tiered and programmatic analysis can be a very effective tool, however it can also confuse issues and the public. Therefore, their use should be limited to specific instances where the scope and scale of an analysis specifically demands such analysis. The process also alienates and confuses the public that it was supposed to inform. It seems that such an analysis can only be effective if it is of a logically limited scope. That way, the analysis is logically geographically tied to the resource at issue. Too broad an analysis will confuse the issue and public; too narrow will not be expedient or economical. (Preservation/Conservation Organization, Bozeman, MT - #662.11.40000.XX)

814. Public Concern: The CEQ Task Force should require programmatic analysis and tiering to be consistent with the principles of ecological and biological processes.

Programmatic analysis and tiering can prove invaluable if the analysis is consistent with principles of ecological and biological processes. (Preservation/Conservation Organization, Eugene, OR - #95.1.40000.F1)

815. Public Concern: The CEQ Task Force should advise against programmatic review and tiering when uses and actions must be balanced at the onset of the planning process.

The Task Force should specify that programmatic review and tiering should not be utilized where various, differing uses and actions must be balanced as the first step in the decision process. Forest and rangeland planning exemplify the situation where all NEPA work should be completed with the development of the plan, not at later stages. (Domestic Livestock Industry, Sacramento, CA - #463.7.40400.C1)

Programmatic Analysis

Summary

This section includes the following topics: Programmatic Analysis General, Issues Best Addressed by Programmatic Analysis, and Issues Not Best Addressed by Programmatic Analysis.

Programmatic Analysis General – Some respondents request that the Task Force conduct a comprehensive revision of NEPA regulations to provide clearer step-by-step guidance for managers. Some feel that this will help ensure consistency of interpretation and approach across federal agencies. “While Programmatic Environmental Impact Statements (PEIS) are used extensively by the Forest Service in forest management,” observes one business representative, “few other agencies have utilized this tool. Thus, there are no common methodologies for completing these statements, and those agencies that have not regularly used this tactic have operated by the seat of their pants.” Others, however, feel that any regulatory clarifications must recognize the inherent differences in the nature of federal actions between agencies and allow different approaches and documentation based on the types of activities they conduct. “A program statement for a national forest plan, for example, presents very different problems than a program statement for a related series of individual projects, such as highway and transportation projects,” writes one NEPA professional. The Task Force should also take into consideration differing statutory direction for various agencies, some feel. Still others recommend that the Task

Force compel agencies undertaking similar or overlapping actions to conduct cooperative joint reviews in order to reduce potential duplication of effort and costs. Bio-threat reduction programs are one such activity, argues a conservation/preservation group.

Some request that the Task Force better define the level of detail required in programmatic documents. “Balance out the need for reducing or eliminating duplicative analysis with the need to provide enough detail to make the analysis meaningful, particularly when such programmatic analysis will be used later for site-specific project analyses,” recommends one recreational group. A state agency suggests that the Task Force encourage use of checklists to determine what level of review is required and whether these conditions are met for a specific planning activity. Some feel that better direction should be given on the content required in programmatic documents. “Limit the narrative on the affected environment and focus on the environmental consequences of the proposed action, including mitigation measures and other standards or guidelines. Eliminate the analysis of speculative situations or unachievable alternatives,” suggests one oil and gas industry representative. Others recommend that the Task Force clarify the time horizon for which programmatic analyses are considered valid to make tiering more effective.

Finally, some assert that programmatic analysis should be reduced or eliminated altogether. “Environmental effects result from actions on the ground . . . Programmatic EISs do not result in approval of on-the-ground actions without a second environmental analysis. Programmatic EISs could be eliminated, or merged with the project-level EIS that always follows,” proposes one timber industry representative.

Issues Best Addressed by Programmatic Analysis – Respondents cite a variety of circumstances that they feel necessitate programmatic analysis. One common theme is scale: many assert that actions which have broader scale temporal and spatial effects must be evaluated through programmatic review. Activities that affect large areas or that transcend administrative boundaries fit this category, some say. Examples provided by the public include activities that occur over a wide area and disproportionately affect specific habitat types and their associated species. Livestock grazing and its effects on riparian zones is an example of one such activity, asserts one conservation/preservation organization. Other examples of broad-scale activities cited by agency personnel and members of the public include activities that affect migratory species such as ocean fisheries management and activities with long time horizons such as nuclear power generation and waste disposal. Without a programmatic review process, these respondents assert, cumulative and combined effects will not be adequately considered. In the absence of such review, they contend, project-level analysis and decisionmaking often leads to incremental environmental degradation. On the other hand, some point out that activities that do not have broader scale effects are best addressed at a site-specific level.

Agencies should conduct programmatic level analysis for classes of similar actions repeated at the project level across a given area that have similar effects, others feel. Some comment that programmatic planning is well suited for establishing broader agency or land unit goals and objectives. “‘Big picture’ issues such as ‘why are we doing in the first place?’ are sometimes best considered at the program level,” writes one preservation/conservation group. This level of planning also best suits regional “zoning” decisions such as land management allocations and wilderness recommendations, some venture. Others believe that regional transportation network design and planning also belong in this category.

Many respondents describe categories of environmental effects that lend themselves to programmatic analysis, with scale considerations again a factor. These include socioeconomic analysis, air, soil, and water quality effects, and protection of remnant habitat types or species. Some feel that regional natural resource commodity development activities are best addressed programmatically, such as grazing, fuels reduction, and minerals, oil and gas exploration.

Issues Not Best Addressed by Programmatic Analysis – Some respondents conclude that it may be easier to define which issues are clearly unsuitable for programmatic level analysis or decisionmaking. One wood products industry representative advises that actions entailing a high degree of uncertainty over a broad area, both in the likely future project activity levels and speculative effects, fall into this category. Recreational travel management on public lands is another activity unsuited to programmatic decisionmaking due to its inherent site-specificity, maintains one recreational organization. Some wood products industry representatives assert that programmatic analysis should be eliminated for forest plans because this level of review is redundant, inefficient, and expensive.

Others contend that actions with significant on-the-ground components are not suited to programmatic analysis. Some respondents counsel that programmatic level planning should not become prescriptive or compel any on-the-ground action without additional site-specific analysis. “The Programmatic document establishes a conservative response to insure damage is not done,” asserts one individual. “The reverse approach is never appropriate—to authorize a potentially ecologically harmful action across a wide geographical area.” Nor should programmatic planning documents contain any site-specific standards or guidelines, asserts a recreation/conservation group. Others submit that programmatic level analysis cannot serve as a substitute for site-specific evaluations in the name of reducing analysis paralysis.

Programmatic Analysis General

816. Public Concern: The CEQ Task Force should provide additional guidance on the appropriate use of programmatic NEPA analysis.

An effective programmatic review conducts reviews at the appropriate steps. Unfortunately, programmatic review can be misapplied to delay analysis of actions beyond the true approval or planning point. For this reason, programmatic review should be better explained by CEQ such that federal agencies have guidelines as to when and how to apply it. (Domestic Livestock Industry, Alturas, CA - #463.6.40400.C1)

The NEPA Task Force should also ensure that additional guidance is prepared for federal agencies that explains how to complete a programmatic NEPA analysis. For example, while Programmatic Environmental Impact Statements (PEIS) are used extensively by the Forest Service in forest management, few other agencies have utilized this tool. Thus, there are no common methodologies for completing these statements, and those agencies that have not regularly used this tactic have operated by the seat of their pants. (Business, Washington, DC - #517.15.40000.C2)

CEQ regulations that govern programmatic analysis and tiering need comprehensive revision. They do not recognize, for example, major differences that occur in the use of program statements for different kinds of agency actions. A program statement for a national forest plan, for example, presents very different problems than a program statement for a related series of individual projects, such as highway and transportation projects.

CEQ regulations need to provide more specific guidance on when program statements are required. The present regulations are simply too vague to be of much use in practice. By this time it should be possible

to identify more specifically the kinds of actions that require program statements and list them in the regulation. Attention must also be given to the relationship between program statements and statutory requirements that appear in other statutes and that affect the programs and plans to which NEPA applies. An example is the statute that applies to fishery plans.

Develop regulations and guidance that indicates when a discussion of a particular impact or issue in a program statement does not need additional analysis in a site-specific document. This regulation would not bind federal courts, but would at least provide some presumptive indication of when a program impact statement needs additional detailing. (NEPA Professional or Association - Private Sector, Washington, DC - #450.15.40500.XX)

TO REDUCE MISAPPLICATION

California Cattlemen's Association and California Public Lands Council suggest that programmatic review and tiering should only be applied where it is appropriate to delay evaluation of a proposed action. In the case of grazing permits, the deferral of NEPA evaluation has resulted in delays and confusion. Improved guidelines from the Council on Environment Quality (CEQ) regarding application of programmatic review and tiering would help reduce its misapplication. (Domestic Livestock Industry, Sacramento, CA - #463.1.40100.XX)

817. Public Concern: The CEQ Task Force should encourage programmatic analysis.

IF THERE IS AN ADEQUATE ADAPTIVE MANAGEMENT PROCESS IN PLACE TO OFFSET THE NEED FOR FURTHER ENVIRONMENTAL REVIEW

Based on our experience, a programmatic document that is too broad in the types of actions or in the geographic area it addresses is of little value. With an appropriate programmatic document, further tiered reviews may often be based on unique circumstances, such as an impact on threatened or endangered species. The programmatic review process may be useful if an adaptive management process can be included that will address sensitive concerns or areas in a way that further environmental review will not be necessary. (Other, Washington, DC - #506.38.40100.C1)

IF ONE DOCUMENT CAN REDUCE OR CLARIFY SUBSEQUENT DOCUMENTS

Programmatic review should be considered when one document can reduce or clarify subsequent documents. For example, a programmatic review of local conditions and past experiences could authorize a categorical exclusion for future local activities. Consider a programmatic document for salvage, fuel reduction and small tree removal, prescribed fire, or grazing permits. Years of experience and hundreds of environmental documents should provide a commonality of conditions that always conclude a finding of no significant effect. Assessed at the local level (national forest or district) provides greater flexibility and credibility than assessments across the entire nation. (Placed-Based Group, Sacramento, CA - #522.23.40110.C1)

818. Public Concern: The CEQ Task Force should ensure that the programmatic EIS is the foundation for any decision made within a program.

The programmatic EIS should be the foundation for any decision made within the program, with individual project decisions requiring a supplemental EA to address any material site-specific or unique details. This tiered approach would minimize redundancy. (Mining Industry, Billings, MT - #440.3.40000.XX)

819. Public Concern: The CEQ Task Force should consider that a good programmatic analysis is one that is sensitive to the issues.

Where there is a solid plan that is sensitive to the issues and really understands the real estate you are working with, it can help immensely. One that doesn't meet this test can do more harm than good. (Individual, McCall, ID - #37.1.40220.C2)

820. Public Concern: The CEQ Task Force should address the need for programmatic analysis across federal agencies

BIO-THREAT REDUCTION PROGRAMS

CCNS offers the following as an example of where federal and inter-governmental collaboration and programmatic analysis would be useful. Large quantities of federal funding are being directed towards the U.S. biological threat reduction programs, yet there is neither coordination nor programmatic analyses among the agencies. The DOE has approved biological safety laboratories, level 3 (BSL-3) at LANL through an environmental assessment (EA). DOE/EA-1364. The EA is being challenged in federal court. Nuclear Watch of New Mexico v. DOE, (D.N.M. 2002). Recently, another DOE site, the Lawrence Livermore National Laboratory, released a draft EA for comment that is expected to be approved. As stated above, large amounts of funding are going into this federal program and yet no programmatic analyses have been done. In addition, the Health and Human Service/National Institutes of Health is proposing a BSL, level 4 in Montana.

CCNS believes that there are a number of unresolved issues involved in these federal activities, including redundancy in the research programs and facilities, possible duplicative analyses, a lack of fiscal responsibility, and a difference in the agencies' policies, including access to information. CCNS questions the oversight CEQ is providing for such similar federal projects. The NEPA Task Force should examine what policies are in place to address the need for programmatic analyses across federal agencies and why these bio-threat reductions programs have slipped through the cracks. (Preservation/Conservation Organization, Santa Fe, NM - #571.6.40100.XX)

821. Public Concern: The CEQ Task Force should establish consistent guidelines to determine the level of detail needed for a programmatic analysis.

These three issues, policy, plan, and programs, provide opportunities to reduce or eliminate redundant and duplicative analysis while at the same time adequately consider the cumulative impact of such broad actions. It is important for the task force to establish consistent guidelines to determine the level of detail that may be needed if programmatic analysis is to be used as a basis for decision. One consideration of the amount of detail is to balance out the need for reducing or eliminating duplicative analysis with the need to provide enough detail to make the analysis meaningful, particularly when such programmatic analysis will be used later for site-specific project analyses. (Recreational Organization, Chesapeake, VA - #448.8.40100.C1)

822. Public Concern: The CEQ Task Force should require agencies to provide adequate documentation at the programmatic level to support a broad array of possible alternatives to satisfy the purpose and need.

It is important to have buy-in from other affected agencies and entities—which may require substantial time and resources. Thresholds are necessary in a programmatic document, to establish whether significant impacts will result from proposed actions and the level of subsequent documentation that will be necessary as a result. The level of detail and the capability to implement commitments directly affect their utility and effectiveness. Adequate documentation should be presented at the tier one state to support a broad array of possible alternatives to satisfy the Purpose and Need. (United States Environmental Protection Agency, No Address - #299.31.40000.XX)

823. Public Concern: The CEQ Task Force should require a maximum of one layer of programmatic analysis above the project level.

At a minimum, the CEQ should require that agencies develop (subject to CEQ approval) NEPA compliance strategies that result in a maximum of one layer “programmatic” NEPA compliance above the project level. (Timber or Wood Products Industry, Deer River, MN - #377.3.40100.XX)

To make tiering both acceptable and workable, the CEQ should require that no more than two NEPA documents be prepared for or applicable to any federal project or other agency action. (Timber or Wood Products Industry, Cleveland, TX - #402.7.40110.XX)

824. Public Concern: The CEQ Task Force should encourage the use of a programmatic checklist.

WisDOT [Wisconsin Department of Transportation] has made attempts to tier environmental documentation but has dropped them because resource agencies perceive that they lack the level of detail they need to make comments. On the other hand, we have developed and obtained FHWA approval on a programmatic Environmental Report for those road rehabilitation and minor bridge projects that require federal concurrence. While tiering EISs has been a bust, the programmatic for road rehabilitation and minor bridge replacements has been a boon. Projects documented using the programmatic checklist encounter virtually no transmittal or review time from either FHWA or WisDOT's Central Office. WisDOT developed a checklist that immediately lets the author know whether additional data is needed to complete the concurrence process. The completed checklist indicates that all pertinent environmental issues and concerns have been considered and there are no significant effects. The checklist is placed in the project files. (Wisconsin Department of Transportation, Madison, WI - #214.16.40000.C1)

825. Public Concern: The CEQ Task Force should ensure that programmatic documents are considered timely for a significant period of time after completion.**TO ALLOW FOR TIERING WITH PROJECT LEVEL NEPA ACTIVITY**

Programmatic NEPA documents should be considered timely for a significant period of time after completion to allow for "tiering" with project level NEPA activity. (Multiple Use or Land Rights Organization, Waynesville, NC - #444.4.10240.XX)

CEQ should insist that the programmatic NEPA document be considered timely for tiering purposes for a significant period after its completion. At a minimum, CEQ should establish a strong presumption of timeliness, with a heavy burden of proof to show that a programmatic NEPA document is too outdated to permit tiering. (Timber or Wood Products Industry, Cleveland, TX - #402.9.40110.XX)

826. Public Concern: The CEQ Task Force should address the appropriate use of programmatic EISs and EAs.

Programmatic EISs and EAs need to be utilized and incorporate all available relevant data to avoid unnecessary research and associated delay, controversy and expense in subsequent NEPA analyses. Barring any significant changes in resource conditions, a simple checklist should be used in place of an EA for small projects. For larger projects, an EA focusing only on those issues not previously addressed in the programmatic analysis is all that is necessary.

Limit the narrative on the affected environment and focus on the environmental consequences of the proposed action, including mitigation measures and other standards or guidelines. Eliminate the analysis of speculative situations or unachievable alternatives. (Oil, Natural Gas, or Coal Industry, Denver, CO - #545.12.40300.XX)

National Marine Fisheries Service has used programmatic environmental assessments (programmatic EAs) on occasion to address a broad category of actions that are ultimately determined not to have a significant impact on the human environment. The programmatic EA would allow an agency to do a broad environmental analysis that possibly could, in the future, serve as a basis for categorical exclusions for specific actions that fall under the program area covered in the programmatic EA. The CEQ Task Force should consider providing guidance on the use of such EAs. (National Oceanic and Atmospheric Administration, Washington, DC - #637.36.40110.XX)

Guidance is needed on the content of program impact statements: what issues they should cover, and how they should be handled. There is very little case law on this topic, so that guidance from CEQ on program impact statement content is much needed.

There is also a considerable amount of uncertainty concerning the need to prepare detailed, action-specific impact statements once a program statement has been prepared. The courts consider this issue

on a case-by-case basis. As a result, neither the agencies nor concerned citizens can know with certainty whether additional and more specific analysis is required until there is litigation. (NEPA Professional or Association - Private Sector, Washington, DC - #450.16.40400.XX)

827. Public Concern: The CEQ Task Force should eliminate the programmatic EIS.

Environmental effects result from actions on the ground. Programmatic decisions have no environmental effects unless carried out through actions. Programmatic EISs do not result in approval of on-the-ground actions without a second environmental analysis. Programmatic EISs could be eliminated, or merged with the project-level EIS that always follows. At a minimum, CEQ should state that agencies shall not prepare more than a single programmatic EIS prior to preparing the environmental document for a project. This direction would be particularly helpful to land management agencies that prepare the majority of programmatic EISs and are headed down a path of preparing multiple levels of programmatic EISs through regional, sub-regional and local planning before a project environmental document is ever prepared. See *Friends of Southeast's Future v. Morrison*, 153 F.3d 1059, 1069 (9th Cir. 1998) (Timber or Wood Products Industry, Portland, OR - #454.51.40100.XX)

828. Public Concern: The CEQ Task Force should ensure programmatic analysis does not supplant formal rulemaking.

NAHB is concerned that programmatic analysis under NEPA may be used to undermine or supplant formal rulemaking requirements. For example, decisions made under NEPA can be hugely important and can effectively establish land use or other policy for years while effectively bypassing public involvement requirements. (Business, Washington, DC - #517.12.40200.C2)

Issues Best Addressed by Programmatic Analysis

General Planning Objectives

829. Public Concern: The CEQ Task Force should consider what issues are best addressed by programmatic analysis.

FOREST-WIDE STANDARDS AND GUIDELINES

Question: C1 Response: . . . some forest-wide standards and guidelines (things everyone agrees with at Forest Planning level). Legal requirements spelled out. (Individual, McCall, ID - #36.1.40100.C1)

VISION, GOALS, AND OBJECTIVES

Question: C1 Response: . . . vision, goals and objectives (Individual, McCall, ID - #36.1.40100.C1)

SHIFTS IN GENERAL POLICY

The following "issue types" are logically addressed through programmatic analyses: . . . shifts in general policy (Recreational Organization, Boise, ID - #90.11.40100.C1)

LONG-TERM PLANNING

Programmatic reviews are appropriate for long-term planning purposes. For example, the Oak Ridge Reservation should have had a site-wide (equivalent to programmatic) EIS in order to better guide decision-making on the use of Reservation lands, impacts of reindustrialization, siting of the Spallation Neutron Source, and other decisions that instead have been addressed in a piecemeal fashion. This allows DOE [Department of Energy] to ignore the broader impacts of the many actions and instead approve individual actions leading to incremental environmental degradation. (Civic Group, Oak Ridge, TN - #88.10.40100.C1)

“BIG PICTURE” ISSUES SUCH AS “WHY ARE WE DOING THIS IN THE FIRST PLACE?”

“Big picture” issues such as “why are we doing in the first place?” are sometimes best considered at the program level. Example: Strange as it may seem, the Forest Service and BLM [Bureau of Land Management] have never considered a NEPA alternative involving protection of all the remaining mature and old growth forest along with comprehensive program of restoration to fix all the problems caused by rapacious clear-cutting and road building from the 1950s through 1990s. The Northwest Forest Plan is explicitly designed to maximize logging and provide the minimum required protection to threatened species. Less than 10% of all logging in the NW is on federal lands, but that’s where virtually all the old-growth logging is done. The agencies have never completed a NEPA analysis justifying why this archaic old growth logging program still continues. (Preservation/Conservation Organization, Eugene, OR - #106.13.40100.C1)

Broadly Defined Actions/Issues**830. Public Concern: The CEQ Task Force should consider what issues are best addressed by programmatic analysis.****BROADLY DEFINED ACTIONS**

The actions subjected to programmatic analysis should be broadly defined to allow a myriad of subsequently identified specific projects to fit under the umbrella of the programmatic analysis. (United States Air Force, Washington, DC - #525.16.40110.C1)

FEDERAL ACTIONS SUBJECT TO JUDICIAL REVIEW

At a minimum, programmatic EISs should be prepared only on those programs which the courts recognize as Federal actions subject to judicial review. (Timber or Wood Products Industry, Deer River, MN - #377.2.40100.XX)

Suggestions for Programmatic EISs. Section 102(2)9C) of NEPA applies to “Federal actions.” At a minimum, then, programmatic EISs should be prepared only on those programs which the courts recognize as Federal actions subject to judicial review. . . For the same reason that the courts refuse to consider litigation against certain programs because the issues to be litigated are not sufficiently developed and lack any factual basis to permit an informed agency environmental analysis on those unwieldy, amorphous programs. As the Supreme Court stated in *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148-149 (1967) and quoted in *Ohio Forestry Association v. Sierra Club*, 523 U.S. 726, 732-33 (1998), “the ripeness requirement is designed ‘to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties’”. Many programs for which EISs are now prepared do not contain any “formalized” “decision” and certainly do not authorize actions that will have any “effects” on either the environment or potential litigants. As NEPA does not provide a definition for “Federal action” or contain an independent judicial review provision, “Federal actions” for purposes of NEPA should be synonymous with the courts’ interpretation of Federal actions ripe for judicial review under the Administrative Procedure Act. (Timber or Wood Products Industry, Washington, DC - #507.5.40100.XX)

RECURRING LAND MANAGEMENT ACTIONS

Recurring land management actions best lend themselves to programmatic analysis and tiering, e.g., road maintenance, forest stand brush removal and small tree thinning that does not use heavy machinery, and use of prescribed fire. These types of activities on national forests follow stringent guidelines to ensure environmental standards are met. These activities should be allowed to proceed with minimal environmental analysis. Adequate research and information is available to decision-makers to permit these low ground-disturbance projects to move forward under larger landscape programmatic reviews. (Association of Oregon Counties, Salem, OR - #456.8.40100.C1)

NEPA analysis of repetitive or routine projects, for which the agencies have developed standard operating procedures to mitigate any known or suspected negative environmental impacts, should not be required at the site-specific level. (Domestic Livestock Industry, Boise, ID - #576.3.40100.XX)

CLASSES OF ACTION IN WHICH THE EFFECTS STAY THE SAME FROM PROJECT TO PROJECT

What types of issues best lend themselves to programmatic review, and how can they best be addressed in a programmatic analysis to avoid duplication in subsequent tiered analysis?

Classes of action in which impacts stay the same from project to project (e.g., specific impacts from renewal of licenses for nuclear power plants that can be analyzed generically) can be reviewed programmatically. (United States Environmental Protection Agency, No Address - #299.29.40100.C1)

CUMULATIVE EFFECT ISSUES THAT TRANSCEND THE PROJECT

Cumulative impact issues that transcend the project must be analyzed in a programmatic manner. (Preservation/Conservation Organization, Eugene, OR - #106.13.40100.C1)

LARGE-SCALE PROBLEMS

Programmatic or strategic EISs could be utilized more effectively. Prepared early in the decision making process, such EISs could be useful in formulating public policy. A programmatic EIS would provide analysis of a situation, alternatives, mitigation and necessary monitoring. Indeed, it could be the focal point for debate and the involvement of governmental bodies and the public.

For example, currently there is debate over federal drought and fire policies. Water management agencies are forced to consider the effects of both situations. This recently has been a problem in several western states where fires are occurring. Such issues transcend local and state boundaries. Rather than focusing on one particular proposed solution, a programmatic EIS could address problems and alternative solutions appropriate to the larger issue, thereby lending assistance to the regional and national debate in formulating public policy. Similar issues can arise in the watershed-planning context. (Utility Industry, Washington, DC - #474.5.40100.XX)

BROAD-BASED ANALYSES TO WHICH INDIVIDUAL PROJECTS WILL BE TIERED

What types of issues best lend themselves to programmatic review, and how can they best be addressed in a programmatic analysis to avoid duplication in subsequent tiered analysis? . . . Programmatic review can . . . be conducted when doing a broad-based analysis off of which individual projects will be tiered (e.g., a corridor-based analysis from which specific road segments will be tiered). (United States Environmental Protection Agency, No Address - #299.29.40100.C1)

SCIENTIFIC “PARADIGM SHIFTS”

The following “issue types” are logically addressed through programmatic analyses: . . . scientific “paradigm shift.” . . . (Recreational Organization, Boise, ID - #90.11.40100.C1)

Broadly Applied Actions

831. Public Concern: The CEQ Task Force should consider what issues are best addressed by programmatic analysis.

ACTIVITIES THAT OCCUR OVER A WIDE AREA

The spatial (geographic) and temporal scale of an environmental analysis is predicated upon which species and resources are present in the planning area, and what activities are proposed. Wide-ranging species, such as Pacific salmon and steelhead, require large-scale planning to address the multitude of impacts they face throughout their life histories at the regional, basin, sub-basin, and stream-reach scales. Endemic species, such as the Yosemite toad (found in a limited area of the Sierra Nevada), require smaller scale analysis but may also benefit from programmatic analysis when certain impacts are pervasive across a region. For example, grazing of wet meadows impacts large portions of federal lands in the Sierra Nevada and is one of the primary factors in habitat loss and overall decline of the Yosemite toad. But wet meadow grazing also impacts the viability of the willow flycatcher, degrades water quality, increases soil loss, and aids in the conversion of native plant communities to invasive exotics.

Thus, activities that occur over a wide area can have a disproportionate impact on a species, suite of species, or habitat type, that may not be adequately addressed at the small-scale (i.e., project level). (Preservation/Conservation Organization, Eugene, OR - #95.2.40000.F1)

PROJECTS REPLICATED ON DIFFERENT PLANNING UNITS

Traditionally, programmatic reviews have been used for instituted activities that occur across the nation or within a specific region. Examples include the issuance of permits for incidental takings of a listed species and habitat restoration activities (wetland mitigations), the control or eradication of invasive species, and the reclamation of water impoundments. In such instances where the same project is being replicated on different planning units, it behooves the federal agency to release a programmatic analysis because the document provides the public with a digestible overview of the task at hand while explaining what the cumulative impacts would be on the environment and society. (Recreational/Conservation Organization, Washington, DC - #89.20.40100.C1)

LARGE OCEAN AREAS

PEISs [Programmatic Environmental Impact Statements] could be prepared for large ocean areas, such as the Western Pacific, Mid-Atlantic, or Gulf of Mexico. Since the “affected environment” information contained in a PEIS for a large ocean area would be germane to all FMPs [Fishery Management Plans] prepared for specific fishery resources or fisheries in this area, such a broad environmental review is arguably an appropriate and alternative approach for preparing PEISs to address Magnuson-Stevens Act fishery management programs. Such broader PEISs would provide general level information regarding the affected environment, including an “ecosystem” approach, where possible, regarding the physical and biological characteristics of the area. These PEISs also would provide the public with the necessary background information concerning the governing legislation and its objectives and limitations, the agency’s mission and general policies, and the institutional structure.(e.g., Council-NMFS system) that would overlay all the FMPs for the subject area. Defining the scope of a PEIS in this manner would reduce the number of programmatic documents to one for each ocean region, rather than one for each FMP or for several FMPs. Considering that PEISs have shelf lives of 5-10 years, this approach, involving a fewer number of PEISs, might offer efficiencies in the use of staff and budget resources allocated to updating environmental analyses. (National Oceanic and Atmospheric Administration, Washington, DC - #637.45.40110.C1)

Land Allocations

832. Public Concern: The CEQ Task Force should consider what issues are best addressed by programmatic analysis.

LAND ALLOCATIONS

Question: C1 Response: Land allocation . . . (Individual, McCall, ID - #36.1.40100.C1)

“ZONING” TYPE DECISIONS

The following “issue types” are logically addressed through programmatic analyses: “Zoning”-type decisions . . . (Recreational Organization, Boise, ID - #90.11.40100.C1)

WILDERNESS AREA RECOMMENDATIONS

The only issues that can be resolved at the programmatic level are issues where the environmental effects can be adequately evaluated at that level. There are not many. . . wilderness area recommendations . . . (Individual, Fort Collins, CO - #118.1.40100.C1)

General Land Management

833. Public Concern: The CEQ Task Force should consider what issues are best addressed by programmatic analysis.

PROCESSES FOR ADAPTIVE MANAGEMENT AND MONITORING

Question: C1 Response: . . . processes for adaptive management and monitoring . . . (Individual, McCall, ID - #36.1.40100.C1)

TRANSPORTATION PLANNING

The benefits of a programmatic or tiered approach to project decisionmaking include: the integration and alignment of transportation planning activities and NEPA, the ability to address multiple projects in a system's context, the examination of similar actions in the same geographic area over a long period of time, an opportunity to streamline the NEPA process for multiple activities within a region or corridor, addressing larger facilities more realistically from a process point of view, and increasing our understanding of the cumulative effects of transportation in a given geographic area. (Federal Highway Administration, Washington, DC - #658.17.40000.XX)

REALTY ACTIONS

Programmatic reviews are valuable for broader type land management programs as implemented by the U.S. Bureau of Land Management and the U.S. Forest Service. The efficiencies are realized in subsequent project analysis that can tier off the programmatic document such as realty actions and permits to drill. (Oil, Natural Gas, or Coal Industry, Denver, CO - #598.9.40100.C1)

SOCIOECONOMIC ANALYSIS

Socioeconomic analysis is highly suited to [programmatic] review, especially as it applies to political and geographical subdivisions. Data that applies to one part of a large county such as ours is usually equally applicable to other parts, particularly similar watersheds. (Bob Cope, Commissioner, Lemhi County Board of Commissioners, Salmon, ID - #70.16.40100.C1)

Natural Resource Management

834. Public Concern: The CEQ Task Force should consider what issues are best addressed by programmatic analysis.

LANDSCAPE ISSUES

Agencies need to address "landscape" issues at the appropriate level, such as the forest plan level, and incorporate these analyses into project level decisions. This would allow the agency to focus more on what is new. (Recreational Organization, No Address - #19.13.40000.A1)

PROTECTION OF REMNANT HABITAT TYPES

What types of issues best lend themselves to programmatic review, and how can they best be addressed in a programmatic analysis to avoid duplication in subsequent tiered analysis? . . . Protecting remnant "habitat types" where they exist. An example of this is Old Growth Forest or Desert Springs. (Individual, Rogue River, OR - #382.15.40100.C1)

NEW SPECIES DESIGNATION

The following "issue types" are logically addressed through programmatic analyses: . . . new species designation . . . (Recreational Organization, Boise, ID - #90.11.40100.C1)

AIR, SOIL, AND WATER QUALITY

Broad issues such as air, soil, and water quality lend themselves to programmatic review. These three parameters can be addressed at a watershed or regional level. (NEPA Professional or Association - Private Sector, Tucson, AZ - #100.1.40100.A1)

VEGETATION MANAGEMENT

Members expressed general support for the use of Programmatic Environmental Impact Statements and WSSA has previously endorsed the Bureau of Land Management's (BLM) current effort to develop a Programmatic EIS for vegetation management in the Western United States. We anticipate this will significantly streamline the process and simplify the work required for subsequent site-specific EAs and EISs. (Other, Washington, DC - #585.9.40000.XX)

EXOTIC PLANT MANAGEMENT

Actions which are meant to benefit the environment are one type of issue which best lend themselves to programmatic review. For example, exotic plant management plans: several smaller actions might be planned. Instead of an agency spending its time and money in multiple Categorical Exclusions or small Environmental Analyses for each one, a programmatic Exotic Plant Management Plan/Environmental Assessment could be issued and periodically updated when more information is available. This way, time is saved—and exotic plants can be eliminated before they completely take over native plant communities. (Individual, Homestead, FL - #490.1.40100.C1)

We . . . suggest a programmatic review of the federal policy for noxious weeds or the lack of a noxious weed control plan. The state expertise on the topic of noxious weed control is vast and in the Pacific Northwest, the BLM lost the Snake River canyon to “yellow star thistle” due to the failure of the agency to apply proper controls and management strategies early in the process. We are unsure if the area can be recovered and it is a blight on the landscape as well as a threat to the private lands in Oregon and Washington. (Domestic Livestock Industry, La Grande, OR - #496.24.40100.C1)

CHEMICAL TREATMENT PLANS

Chemical treatment plans, both for plants and insects, are . . . suitable [for programmatic review]. (Bob Cope, Commissioner, Lemhi County Board of Commissioners, Salmon, ID - #70.16.40100.C1)

FUEL REDUCTION PLANS

Examples [of projects suitable for programmatic review] include fuel reduction plans, especially on Class III lands . . . (Bob Cope, Commissioner, Lemhi County Board of Commissioners, Salmon, ID - #70.16.40100.C1)

Natural Resource/Commodity Development

835. Public Concern: The CEQ Task Force should consider what issues are best addressed by programmatic analysis.

CATEGORICAL EXCLUSIONS FOR FUEL REDUCTION AND/OR TIMBER HARVEST

Examples [of projects suitable for programmatic review] include . . . categorical exclusions for fuel reduction and/or timber harvest. The process of compiling an Environmental Impact Statement, which must then be followed by Environmental Assessments for implementing portions of that EIS, should be avoided. The concept of multi-layered concentric circles of management procedures is a receipt to accomplish nothing. (Bob Cope, Commissioner, Lemhi County Board of Commissioners, Salmon, ID - #70.16.40100.C1)

OIL AND GAS LEASING (NOT EXPLORATION)

The only issues that can be resolved at the programmatic level are issues where the environmental effects can be adequately evaluated at that level. There are not many. . . . oil and gas leasing (not exploration). . . (Individual, Fort Collins, CO - #118.1.40100.C1)

MINERAL EXPLORATION

Under “C Programmatic Analysis and Tiering,” no-discretionary activities such as locatable minerals, exploration, as well as pick and shovel work and suction dredging where T and E [Threatened and Endangered] species exist, could be facilitated under programmatic analyses. The State already permits these types of activities, so a programmatic approach would be appropriate, at least in Oregon. The

Forest Service has been afraid to use this type of analysis, since they are so fearful of the environmental faction and the appeals and lawsuits their NEPA documents bring. (Individual, Unity, OR - #216.3.40100.XX)

GRAZING

A programmatic review of livestock grazing on a broad scale will be more efficient than to conduct site-specific environmental reviews. Grazing to control fuel loads will be short-term, intense, and geographically limited. Agencies such as the BLM and USFS should only be required to produce programmatic documents to further fuel load control by utilizing livestock grazing. The environmental impacts will be minimal and in all likelihood highly similar across the western landscape where the greatest threat of wildfires occur. A programmatic review of livestock grazing for controlling fuel loads is the most efficient method. (Domestic Livestock Industry, La Grande, OR - #496.23.40100.C1)

Other

836. Public Concern: The CEQ Task Force should consider what issues are best addressed by programmatic analysis.

RESPONSE TO IMMEDIATE CHANGE NECESSITATED BY CHANGING LAWS

The following “issue types” are logically addressed through programmatic analyses: . . . Response to immediate change necessitated by changing laws (Recreational Organization, Boise, ID - #90.11.40100.C1)

CARTOGRAPHIC PRESENTATIONS

I am not comfortable with a completely programmatic approach to analyses, in any area. Perhaps cartographic presentation would be one, but some degree of crossover is beneficial when the areas of agency expertise and responsibility overlap. We often see significant differences between FWS [Fish and Wildlife Service] and BLM [Bureau of Land Management], for example—but they both have responsibilities for wise management of the same geographic area. (Individual, Katy, TX - #191.1.40100.C1)

A VARIETY OF USES AND ISSUES

DPNM believes that managing an area for a variety of uses and issues, rather than the single-issue, single-species management that is typically utilized by agencies is the most effective and productive method of management, and so would support the use of multiple working hypothesis programmatic analyses whenever possible. (Agriculture Industry, Santa Fe, NM - #466.19.40100.XX)

The NMCGA believes that managing an area for a variety of uses and issues, rather than the single-issue, or in the case of the Endangered Species Act, single-species management that is typically utilized by agencies is the most effective and productive method of management, and so would support the use of programmatic analysis whenever possible. (Domestic Livestock Industry, Albuquerque, NM - #80.18.40100.XX)

C. Programmatic Analysis and Tiering. Many times in addressing Endangered Species a whole landscape is recommended to be managed for a single species. This is most often harmful to the landscape and the other inhabitant plants and animals. (Domestic Livestock Industry, Tucson, AZ - #361.12.40100.XX)

Issues Not Best Addressed by Programmatic Analysis

837. Public Concern: The CEQ Task Force should consider what issues are not best addressed by programmatic analysis.

SITE-SPECIFIC ISSUES

[C1] Response: It's easier to respond with the types of issues that definitely do not lend themselves to programmatic review and analysis: site-specific issues, which cover 99% of the issues that are important to us. If this question is leading to the recommendation that more programmatic reviews are needed as a means of reducing "analysis paralysis," that is not the answer. Each site where any project activity is proposed is unique and often reacts to the project in different ways. (Government Employee/Union, Grangeville, ID - #44.15.40100.C1)

The Programmatic document establishes a conservative response to insure damage is not done. The reverse approach is never appropriate—to authorize a potentially ecologically harmful action across a wide geographical area. In such instances, site-specific information is crucial to project planning and is absolutely necessary if a sound evaluation of effects is to be determined. Many of the Project EAs I have been reading tier to a Programmatic EIS when the site-specific information needed to examine in detail the environmental significance of the project would be better served with a project EIS. Don't authorize ground disturbing actions through programmatic review. (Individual, Rogue River, OR - #382.16.40110.C1)

Broadscale management guidelines do not work well if prescribed. They often do not fit site-specific conditions, and hamstring critical local flexibility. (Association of Oregon Counties, Salem, OR - #456.8.40100.C1)

Programmatic analyses rarely are complete because they cannot possibly address all the issues related to site-specific implementation. Moreover, they typically are expensive and time intensive to produce, and in some cases, tiering site-specific decisions up to a more general programmatic NEPA analysis leads to confusion and a lack of trust among the public for the responsible federal agency. Rarely does the public have ready access to these programmatic analyses, and most often the public is not interested in the necessity of reviewing another federal document. For these reasons, we believe NEPA analysis and documentation should occur as close to the site-specific implementation as possible. (Recreational/Conservation Organization, Washington, DC - #89.21.40300.C1)

Planning at all levels is out of hand. The more levels there are, the more likely there will be procedural mistakes that will invite litigation that have nothing to do with whether there is good resource planning being done. Programmatic EISs should not contain site-specific standards and guidelines. The Sierra Nevada Framework, a regional document that pretended to be programmatic, covered a vast and diverse landscape and contained standards and guidelines more specific than the standards and guidelines in the eleven forest plans it affected. (Willy Hagge, Supervisor, Modoc County Board of Supervisors, - #636.10.40100.XX)

ACTIONS THAT WILL INVOLVE A SUBSTANTIAL "ON-THE-GROUND" COMPONENT

Programmatic analyses are poorly suited for actions that will necessarily involve a substantial "on-the-ground" component. (Recreational Organization, Boise, ID - #90.11.40100.C1)

ROUTE DESIGNATION PROCESSES

Of primary interest to our clients is "travel planning" processes, including route designation processes for off-highway vehicles ("OHV") and other means of recreational access. In our experience, programmatic analysis is of limited utility in making such decisions. A classic example is the experience of the Shawnee National Forest in addressing OHV access. The Forest adopted a Forest Plan in 1986, which addressed OHV access through a program-level decision designating "corridors" where OHV use

might be allowed. Under the Plan, subsequent project-level analysis would determine specific routes and address relevant site-specific issues. The Plan was amended in 1992, and numerous aspects of the Plan were challenged, including the decision creating the OHV corridors. While many of the challenges were rejected, a U.S. District Court found merit in a technical argument addressing the OHV corridors. No further analysis has occurred, and OHV use is therefore not generally allowed on the Forest. In this situation, route designation is an intensely site-specific undertaking. To the extent there is ever a programmatic element to such an exercise, there is little or no advantage to be gained by attempting the programmatic decision through a separate process. For example, if a Forest wishes to clarify that [it] is a “designated route” Forest, as opposed to an “open” Forest, that programmatic decision can be included in the same process containing the project-level analysis of specific routes. It is inefficient and counterproductive to “tier” analyses for issues like route designation, where site-specific issues will necessarily dominate and program-level concepts can be logically covered as part of a single decision. (Recreational Organization, Boise, ID - #90.12.40100.C1)

PRE-DECISIONAL PLANNING OR ANALYSIS OF BROAD GEOGRAPHICAL AREAS

At a minimum, programmatic EISs should be prepared only on those programs which the courts recognize as Federal actions subject to judicial review. CEQ should excuse from NEPA “programmatic” documentation pre-decisional planning or other documents that cover such broad geographical areas and so many unknown projects as to be unsusceptible or poorly susceptible to NEPA-related environmental analysis. (Timber or Wood Products Industry, Coeur d’Alene, ID - #446.3.40100.XX)

SECOND TIER ANALYSIS

A strong case can be made that these second tier analyses are unnecessary. The land management plan has already considered the environmental, social and economic impacts of the general activity on the land unit. The level of analysis typically conducted in such plans is site-specific enough to encompass site-specific activities. If the decision to permit livestock grazing in certain areas of a land unit has been made, of what value is it to require other analysis for each individual allotment or permit? Unless conditions have changed since the land management plan was developed, further analysis will be of no benefit. Environmental conditions have been considered, and decisions have been made based on that information. It certainly makes no sense to duplicate the prior analysis. (Agriculture Industry, Bozeman, MT - #451.17.40110.XX)

FOREST PLANS

CEQ regulations call for programmatic NEPA on “plans” This requirement is redundant because each project must have its own individual NEPA process. Apparently only DOE and USFS follow this regulation religiously. Other agencies allegedly ignore the requirement. It would save the USFS an estimated \$50 million or more annually if the USFS didn’t have to perform NEPA on Forest Plan amendments and revisions. (Timber or Wood Products Industry, Ketchikan, AK - #524.1.40000.XX)

Tiering

Summary

This section includes the following topics: Tiering General, and Issues Best Addressed in Tiering.

Note: Since the tiering of site-specific project level analysis is predicated on prior programmatic level analysis under which it can proceed, comments about these two types of analysis are closely related to each other. For instance, examples of the kinds of projects well suited to tiering overlap extensively with those suited to programmatic analysis, since both analyses will occur sequentially in these categories of planning activities.

Tiering General – Many respondents ask the Task Force to encourage the use of tiering and cite numerous benefits that they see in this process. Echoing comments regarding programmatic level analysis, respondents who address this topic often request more specific regulatory direction

from the Task Force in order to more effectively utilize tiering. These respondents note benefits such as reduced redundancy, increased efficiency, confirmation of programmatic level analysis, and filling the need for more detailed information at the project level than can be found in necessarily broader programmatic analysis.

Some respondents warn, however, that tiering site-specific decisions to programmatic analysis may not always be beneficial. Tacit rubber-stamping of tiered projects is of particular concern to some preservation/conservation groups. “All too often tiered analyses are seen as an ‘easy out,’” contends one group. “Instead of making a good faith effort to evaluate and ground-truth the underlying assumptions of the programmatic analysis, site-level analysis utilizes the original document as a stamp of approval for going forward with a given project.” Others, however, believe that the Task Force should specify that once programmatic direction has been established, site-specific analysis need only consider whether the project is consistent with it. Other respondents express concern about the strategy used by some agencies of tiering EAs to previous EAs, rather than completing EIS documentation. One example cited by a respondent is the current regulatory approach for genetically modified crops. Other respondents, however, feel that the practice of tiering EAs to previous EAs for similar projects is perfectly acceptable.

Issues Best Addressed in Tiering – A few respondents describe categories of activities that they feel are best addressed through tiering. Both a federal agency and some interest groups recommend that individual segments of many regional transportation networks can be appropriately addressed by tiering them to a comprehensive programmatic plan. Tiering is also effective for land management planning and project implementation by the Forest Service and Bureau of Land Management, concludes the same federal agency. A state agency remarks that tiered analysis is most effective when it only considers new information or issues that were not previously reviewed in higher level planning.

Tiering General

838. Public Concern: The CEQ Task Force should provide guidance on methodologies for a tiered NEPA process.

The recent experiences with tiering have revealed the need for additional guidance and possibly regulatory changes in some areas. One particular area of concern involves the integration of a tiered NEPA process with regulatory requirements, so that tiered approaches can be used while also assuring compliance with those other laws.

In this context, AASHTO supports efforts to maintain the high degree of flexibility that exists under the current CEQ tiering regulations, while also doing more to disseminate guidance and best practices regarding methodologies for completing a tiered NEPA process. (American Association of State Highway and Transportation Officials, Washington, DC - #591.8.40400.XX)

839. Public Concern: The CEQ Task Force should encourage the use of tiering.

TO REDUCE REDUNDANCY

Redundancy is a problem in the NEPA process both from the standpoint of not applying “tiering” enough, and our inability to share information successfully from region to region. Agencies need to tier more from Forest Plan and Master Development Plan analyses, such that site-specific analysis is more streamlined and incorporates information already gathered in these earlier stages. (Recreational Organization, No Address - #19.13.40000.A1)

Programmatic analysis and tiering, when done for Federal Aid, should have as one of its goals the elimination or reduction of the environmental analysis required to be prepared by the states for their proposed actions. (Michigan Department of Natural Resources, Lansing, MI - #563.16.40000.XX)

TO REDUCE AND IMPROVE NEPA DOCUMENTATION

Tiering can be used to reduce and improve NEPA documentation. A PEIS can provide a vehicle to assess the impacts of a course of action, such as the National Energy Plan, across a geographic area and over time. With a PEIS, the documentation for a specific project can be reduced and the focus can be on the added impacts of the new proposed development together with what has already occurred in the area and what is expected to occur. Attempts to short-circuit the process by delaying environmental analysis or relying on out-dated analysis will likely result in more delay and controversy than if the agency had devoted the resources and time to doing the analysis completely and correctly the first time. Moreover, whether an agency chooses the more efficient and forthright path of producing and tiering to programmatic analyses or not, it will at all events still be responsible for examining the cumulative impacts from reasonably foreseeable impacts together in one or more documents. See, e.g., Native Ecosystems Council, 2002 WL 31051552 at *10. (Preservation/Conservation Organization, Washington, DC - #471.22.40100.XX)

TO VERIFY THE APPROPRIATENESS AND ACCURACY OF THE PROGRAMMATIC ANALYSIS

Tiering can play an important role in environmental planning processes if the overarching programmatic analysis is done properly and if it is employed to verify the appropriateness and accuracy of the larger scale programmatic analysis and not simply to validate it. (Preservation/Conservation Organization, Eugene, OR - #95.3.40000.F1)

BECAUSE PROGRAMMATIC ANALYSIS CANNOT ADDRESS ALL THE ISSUES RELATED TO SITE-SPECIFIC IMPLEMENTATION; IS EXPENSIVE AND TIME INTENSIVE TO PRODUCE; AND LESSENS PUBLIC TRUST

Programmatic analyses rarely are complete because they cannot possibly address all the issues related to site-specific implementation. Moreover, they typically are expensive and time intensive to produce, and in some cases, tiering site-specific decisions up to a more general programmatic NEPA analysis leads to confusion and a lack of trust among the public for the responsible federal agency. Rarely does the public have ready access to these programmatic analyses, and most often the public is not interested in the necessity of reviewing another federal document. For these reasons, we believe NEPA analysis and documentation should occur as close to the site-specific implementation as possible. (Recreational/Conservation Organization, Washington, DC - #89.21.40300.C1)

BECAUSE PROGRAMMATIC ANALYSIS ROUTINELY DISREGARDS ECONOMIC EFFECTS

My problem with the programmatic reviews is they are too broad to really get into details, such as economic impacts to local governments, in fact economic impacts are routinely disregarded by every NEPA document I have reviewed. A violation of NEPA. (Individual, Pioche, NV - #336.2.40300.C1)

840. Public Concern: The CEQ Task Force should consider that successful tiering is contingent upon timely development and implementation.

Successful tiering is contingent on timely development and implementation. Additionally, the RMP should have specified a protective management standard for the interval before the completion of the TMP. (Preservation/Conservation Organization, No Address, - #498.9.40100.XX)

841. Public Concern: The CEQ Task Force should recognize that tiered analysis often uses the programmatic analysis as a stamp of approval for projects which actually merit further analysis.

All too often tiered analyses are seen as an “easy out.” Instead of making a good faith effort to evaluate and ground-truth the underlying assumptions of the programmatic analysis, site-level analysis utilize the original document as a stamp of approval for going forward with a given project. A recent example of this is the proposed Bitterroot National Forest Burned Area Recovery Project Final EIS and the accompanying Biological Opinion (BO) issued by the Fish and Wildlife Service. The proposed Burned Area Recovery (“BAR”) Project would have allowed salvage logging on 41,000 acres within the

Bitterroot National Forest in Montana. The project, as originally designed, would have caused prolonged degradation of habitat in bull trout streams already stressed (in the short term) by the fire. This unacceptable risk to federally-listed bull trout was due in large part to the Biological Opinion (BO) issued by the Fish and Wildlife, and which was tiered to a programmatic BO for the larger Columbia River Distinct Population Segment (DPS) of bull trout that encompasses the project area. Although the BO conceded that the Columbia River bull trout DPS is highly fragmented and that the upper Columbia River portion of the DPS is nearly extirpated, the Service illogically concluded that the project would not jeopardize the Columbia River bull trout DPS. Yet the bull trout BO for the Bitterroot BAR project lacked any analysis of the claim that loss of local populations does not compromise the recovery of the DPS as a whole. In place of thoughtful analysis, it refers back to the programmatic BO for the entire Columbia River DPS as justification for signing off on a project that would have devastated local bull trout populations. (Preservation/Conservation Organization, Eugene, OR - #95.4.40200.F1)

We support the appropriate use of programmatic analysis and tiering. However, it is our experience that the Forest Service, BLM, National Marine Fisheries Service, and Fish and Wildlife Service are unable to utilize programmatic documentation and tiering in such a legal manner. Therefore, we caution against its use, unless the appropriate analysis has taken place at all levels, as described below.

We are well aware of the Bush Administration's complaint regarding "analysis paralysis," a phrase that is usually used to refer to the many levels of environmental review. However, we have no examples of where programmatic analysis has been used in an appropriate manner. For example, consultation on listed species occurred to some degree in the biological opinion for the Northwest Forest Plan, but that opinion specifically reserved for later consultations the determination of whether species such as the northern spotted owl would be jeopardized by site-specific timber harvest. In Oregon, Fish and Wildlife Service (FWS) fulfills its Endangered Species Act Section 7 obligation by consulting on a programmatic basis with USFS and BLM for federal timber sales within geographic provinces established by the Northwest Forest Plan (e.g., Willamette Province). These provincial programmatic consultation documents merely state that they "tier" to the NFP biological opinion for their effects analysis. In turn, site-specific timber sales analysis NEPA documents simply refer to the programmatic biological opinions for the impacts to species. The result is that the impacts of logging to listed species are never adequately discussed, in violation of both NEPA and the Endangered Species Act. This situation is illegal, and is currently under review by the Ninth Circuit Court of Appeals. (Preservation/Conservation Organization, Vancouver, WA - #103.9.40300.C1)

842. Public Concern: The CEQ Task Force should limit site-specific analysis to a consistency check with programmatic plans.

Site-specific NEPA analyses should be limited to whether the proposed action is consistent with an applicable overall use plan. (Agriculture Industry, Susanville, CA - #441.12.40000.XX)

843. Public Concern: The CEQ Task Force should not allow agencies to tier one EA to another EA.

Another disturbing method of EIS-avoidance is the notion APHIS introduced of "tiering" one EA off of an earlier EA, instead of off an earlier EIS. APHIS has recently sought to avoid standard NEPA tiering requirements and produced EAs that are inadequate and violate CEQ regulations. We refer to several EAs on industry petitions to deregulate new GM herbicide resistant canola products. (Other, Washington, DC - #476.12.40000.XX)

844. Public Concern: The CEQ Task Force should allow agencies to tier one EA to another EA.

FOR PROJECTS OF SIMILAR TYPE

Projects of similar type should be able to be tiered to previous EAs with only site-specific, substantive differences needing supplemental new analysis. (Individual, Cortez, CO - #379.3.40110.XX)

845. Public Concern: The CEQ Task Force should address second-level planning.

IDT would decide for each 2nd-level planning unit based on major issues. Forest Plan would provide for consistency and process. (Individual, McCall, ID - #41.1.50400.D4)

Issues Best Addressed in Tiering**846. Public Concern: The CEQ Task Force should consider what issues are best addressed in tiering.****POLICY AND PROGRAMMATIC MANAGEMENT DECISIONS**

Complex decisions and issues that lend themselves to tiering are found in policy and programmatic management decisions. For example, tiering was appropriate for the I-70 Mountain Corridor Preliminary EIS, because policy decisions regarding priorities and individual projects to that would enhance mobility and capacity while protecting resources and human communities have to be made. Tiering on I-70 has been difficult because of the lack of a clearly defined statement of Purpose and Need. If these were clearly established at the inception of the NEPA process, information appropriate for decisions in the ROD would be more substantial.

In addition, the USFS [United States Forest Service] and BLM [Bureau of Land Management] effectively use tiering to prepare Resource Management Plans regarding programmatic decisions about policies and goals for land management and resource protection. FHWA [Federal Highway Administration] uses tiering to prepare corridor plans that establish future projects for individual segments, interchanges, and other facilities. Mitigation commitments may be included in a programmatic document or in project-specific NEPA documents, varying by agency and type of project. (United States Environmental Protection Agency, No Address - #299.32.40100.XX)

NEW ISSUES OR SITE-SPECIFIC ISSUES NOT ALREADY REVIEWED AT HIGHER TIERS

The concept of tiering likely provides added support for NEPA projects by strengthening projects as they receive multiple reviews. However, it also creates complications because multiple reviews involve different players than had been involved initially and therefore have the potential to create additional requirements on applicants. This is similar to the problems of having a large percentage of staff turnover and then having new staff not be aware of actions that were discussed and taken along the way to development. This could cause unnecessary delays once things have already been negotiated, particularly for projects where the lead federal agency has already been involved throughout the conceptual stages of the project and provided comment along the way. Tiering works when each new level of review addresses new issues only, or either site-specific or more specific aspects not reviewed at higher "tiers" rather than revisiting each issue in its entirety at each successive tier. (Washington State Department of Natural Resources, Olympia, WA - #128.6.40000.C1)

TRANSPORTATION SYSTEM ANALYSIS

Better environmental stewardship could be a product of a tiered NEPA process that undertook relatively fewer but far more comprehensive reviews of highway projects, with more effective consideration of secondary, indirect and cumulative impacts, such as induced land use and travel effects, using state-of-the-art analysis tools. Combining a number of smaller corridor-level NEPA studies of proposed road expansions into a larger sub-regional or regional NEPA analyses of alternative transportation investments, management and pricing strategies, and growth management plans could reveal a much wider array of effective demand management, transit investment, system management, and partial build scenarios that could avoid major adverse impacts that typically result from major highway system expansion schemes. (Preservation/Conservation Organization, Washington, DC - #535.15.40100.XX)

Methods to Avoid Duplication in Programmatic and Tiered Analysis

Summary

Numerous respondents make the case to the Task Force that duplication of effort and information content in tiered planning processes often hinders rather than advances the effectiveness of agency decisionmaking. Duplication of effort wastes limited agency resources and results in unnecessary delays in project implementation, assert these respondents. Opinions vary as to whether additional guidance from the Task Force may help avoid such duplication in programmatic and tiered analysis. Some respondents recommend that tiered planning efforts should only consider new issues or information not previously reviewed at the programmatic level. Otherwise, duplication of information and analysis is inevitable, many feel. “If a new document is needed, it should tier to the existing documents, and only address any ‘new conditions,’” suggests a special use permittee. The Task Force should also clarify that EAs need not be stand-alone documents, conclude other respondents. Some respondents maintain that redundant tiered analyses are a rational defensive position taken by agencies faced with repeated litigation, as costly a strategy as this may be. “A forced reanalysis of the same issues may be redundant and it may be duplicative,” writes one respondent, “but it may well be essential agency strategy so long as CEQ fails to provide regulatory guidance. For litigants motivated by ideology, it is likely that a study of tomatoes in my neighbor’s back yard may not be tiered to the findings of a prior study of the same variety in my back yard because of different street addresses.”

Others, however, believe that tiered project-level analyses provide important degrees of detail not found at the programmatic level. “Tiering can fine-tune the analysis to smaller scales without duplication,” submits one NEPA professional.

Others suggest that solutions to reducing duplication of analysis may be found outside the immediate CEQ regulatory framework in the realm of interagency working relationships and individual agency goals. Some assert that the lack of coordination between federal agencies in planning efforts is one cause of inefficient planning processes. “There appears to be no system in place to assure coordination takes place at all, much less that it is timely or effective,” remarks one special use permittee. “This system is required to both provide better analysis and avoid what amounts to sabotage of an entire process!” Some preservation/conservation organizations contend that an overhaul of Forest Service and Bureau of Land Management timber sale programs to shift focus from mature growth logging to true watershed restoration projects and small diameter thinning would reduce interagency consultation burdens, reduce controversy, and speed programs of work.

847. Public Concern: The CEQ Task Force should consider methods to avoid duplication in programmatic and tiered analysis.

DIRECT MOST EFFORT TO EIS ANALYSIS AND APPLY PROJECT-LEVEL NEPA ONLY TO EMERGING ISSUES AND EFFECTS NOT PREVIOUSLY DISCUSSED

I believe Forest Plans are too big, too confusing, poorly integrated, too far removed from the ground and do more harm than good. A Forest Plan should be short, easy to understand, provide a vision, goals and objectives, consistency, general direction, adaptive management strategies, and a framework for standards and guidelines to apply at the next planning level. The real effort should be put into 2nd level

planning management areas, watersheds, or other to-be-decided land units. These would be environmental impact statements. Here is where real planning takes place, done by those that know it best with public participation. With the latest technology map where sensitive wildlife habitat occurs, important fisheries, decide on visuals over the long term, urban interfaces at risk, vegetation at risk etc. Decide what the landscape structure and composition should be based on the critters, for example, that are there have a goal to shoot for. Get some real integration of resources. Have a long-term solid plan tiered to the vision in the Forest Plan. Project level NEPA should then become a short CE [Categorical Exclusion] or EA [Environmental Assessment] that implements this plan and addresses only emerging issues and impacts not previously discussed (adaptive management). Update (adapt) this plan at each NEPA project opportunity or as part of some annual Forest Plan update. (Individual, McCall, ID - #39.1.40100.D2)

NEPA Analysis is Redundant: We conduct new studies and analysis of issues that have already been adequately addressed. There needs to be more intensive use of “tiering” to other completed environmental/NEPA documents. While some courts have suggested a “shelf life” for NEPA documents, the fact is that much of the environmental information/data does not change. If a new document is needed, it should tier to the existing documents, and only address any “new conditions.” (Special Use Permittee, Whitefish, MT - #478.4.40110.XX)

ENSURE THAT PROJECT ANALYSIS DOES NOT REPEAT ANALYSIS FROM THE PROGRAMMATIC DOCUMENT

Site-specific NEPA analyses should be limited to whether the proposed action is consistent with an applicable overall land use plan. A common criticism of the NEPA process is it is often duplicative. Nowhere is this more evident than in the land use planning process.

Both the Forest Service and the Bureau of Land Management (BLM) require the development of land use plans for their individual management units every 10 to 15 years. The NEPA analysis performed on these units is an Environmental Impact Statement for the entire unit.

The land management agencies also conduct NEPA analyses for each site-specific action that comprise the land use plan. For example, a land use plan might allow for a certain amount of livestock grazing within the unit. Land managers would also conduct a level of NEPA analysis for each allotment or permit within the unit as well. The same holds true for each oil and gas lease, or other action allowed by the land use plan. These analyses often duplicate the analyses conducted in the land use EIS.

These second tier analyses can be very expensive and time-consuming, often diverting scarce manpower resources from the work they are supposed to do.

A strong case can be made that these second tier analyses are unnecessary. The land management plan has already considered the environmental, social and economic impacts of the general activity on the land unit. The level of analysis typically conducted in such plans is site-specific enough to encompass site-specific activities. If the decision to permit livestock grazing in certain areas of a land unit has been made, of what value is it to require other analyses for each individual allotment or permit? Unless conditions have changed since the land management plan was developed, further analysis will be of no benefit. Environmental conditions have been considered, and decisions have been made based on that information. It certainly makes no sense to duplicate the prior analysis. (Business, Washington, DC - #403.16.40110.XX)

REQUIRE THAT EAS NOT BE STAND-ALONE DOCUMENTS OR REPEAT ANALYSIS FROM THE PROGRAMMATIC NEPA DOCUMENT

CEQ should require that the EA for any project subject to a programmatic NEPA document not be a stand-alone document or repeat any analysis from the programmatic NEPA document. (Timber or Wood Products Industry, Quincy, CA - #452.13.40000.XX)

REFERENCE THE EIS IN SUBSEQUENT TIERED DOCUMENTS

Programmatic reviews seem most appropriate for issues with multiple overarching effects. A major DOE [Department of Energy] example is the Yucca Mountain Project. When the decision is then made to go forward with an action, tiered analyses can be accomplished based on more specific plans or local actions that will depend on the ability to dispose of high level waste at Yucca Mountain. The best way to

avoid duplication is to reference the Final EIS when evaluating alternatives for transportation plans, sequenced waste disposal, or whatever the next level decision may be. When possible, programmatic reviews need to identify and include a thorough analysis of site-specific impacts; such analyses then can form the basis for additional tiered documentation. (Civic Group, Oak Ridge, TN - #88.9.40110.C1)

LIMIT THE SCOPE OF SITE-SPECIFIC ANALYSIS

If site-specific analyses are to be required, their scope should be narrowed considerably. Any site-specific NEPA document should only consider (1) whether conditions have appreciably changed since the unit EIS was conducted, and (2) whether the proposed site-specific action is consistent with the land management plan. Any other consideration should have already been a part of the EIS on the land management plan, and need not be duplicated.

Appropriate limitation of site-specific NEPA analyses to avoid duplication could save agencies significant money and manpower. (Business, Washington, DC - #403.17.40110.XX)

REVAMP TIMBER SALE PROGRAMS TO FOCUS ON TRUE WATERSHED RESTORATION

Perhaps one way to reduce the amount of consultation and duplicative NEPA analysis would be to revamp the Forest Service's and BLM's [Bureau of Land Management] timber sale program, to focus on true watershed restoration rather than mature and old growth logging. We would propose that the agencies prepare watershed-wide restoration proposals that focus on thinning young managed stands, fire-prone areas of dense forest, correcting fish passage issues, riparian planting, and in-stream habitat creation (to name a few aspects of restoration). This environmental impact statement could include all of the projects that the agency wanted to implement in that watershed for a period of five to 10 years, and would require a single consultation with appropriate agencies. Provided that this EIS was legally adequate, considered public input, and proposed true restoration rather than "forest health" logging (which focuses on old growth logging and roading), it would reduce the amount of controversy inherent in the projects that the Forest Service and BLM [Bureau of Land Management] are currently offering (i.e., commercial timber sales targeting mature and old growth forests). (Preservation/Conservation Organization, Vancouver, WA - #103.10.40110.C1)

ENCOURAGE INTERAGENCY COORDINATION

Lack of Coordination Between Federal Agencies Has Resulted in Duplication of Work and Unnecessary Analysis. The regional offices of the USFWS and EPA each provided a comment on the first DEIS. These comments were received after the official comment period, and due to a lack of coordination during the EIS analysis, led to extensive additional analysis. In fact, the EPA comments directly led to the decision to produce the Revised DEIS presently being completed by the agency.

The complexity of the NEPA process requires extensive coordination between agencies who must coordinate or consult with one another on parts of the analysis. There appears to be no system in place to assure this coordination takes place at all, much less that it is timely or effective. This system is required to both provide better analysis and avoid what amounts to sabotage of an entire process! (Special Use Permittee, Ashland, OR - #495.3.40110.XX)

Duplicative environmental documentation is a significant problem throughout the agencies and administrative determinations are currently underutilized by the agencies. It is becoming routine for agencies, particularly BLM, to request industry to fund not only field development environmental analyses but also analyses for smaller projects (e.g. small coal bed methane exploratory projects), or subsets of NEPA such as T&E and cultural surveys. Whether agencies or industry funds environmental analyses, it is in the best interest of both parties to work together and focus on compliance with CEQ regulations at 43 CFR 1500-08. (Oil, Natural Gas, or Coal Industry, Denver, CO - #545.11.40110.XX)

848. Public Concern: The CEQ Task Force should recognize that tiering can fine-tune the analysis to smaller scales without duplication.

Tiering can fine-tune the analysis to smaller scales without duplication. (NEPA Professional or Association - Private Sector, Tucson, AZ - #100.2.40110.A1)

849. Public Concern: The CEQ Task Force should consider that the prospect of reducing or eliminating redundant and duplicative analysis is not promising.

BECAUSE OF THE INHERENT DIFFERENCE BETWEEN ECOSYSTEM AND SITE-SPECIFIC ANALYSIS

Concerning programmatic analysis and tiering, the Federal Register notice suggests it may be possible “to reduce or eliminate redundant and duplicative analyses through the use of programmatic and tiered analyses....” It would be interesting to know whether there is on record any programmatic analysis which concluded that individual agency actions, environmentally benign in isolation, are environmentally malignant when considered in broader context. In any event, given the inherent difference between a programmatic analysis of broad issues and broad alternatives (“take a ‘big picture’ or ecosystem view”) and the particularity of a site-specific analysis, the prospect of reduction or elimination of redundant and duplicative analyses is not promising unless CEQ chooses some ordination of the matter by rule.

Twenty years ago CEQ was made aware of the view among respondents that “the second level EIS necessary for tiering is likely to repeat most of the information contained in the original EIS and force a reanalysis of the same issues.” CEQ Synopsis of Comments of Respondents to Federal Register Notice of August 14, 1981, 4. Once again, this view originated in the concern that a “tiered EIS” might be judged inadequate by the courts. *Ibid.* A forced reanalysis of the same issues may be redundant and it may be duplicative, but it may well be essential agency strategy so long as CEQ fails to provide regulatory guidance. For litigants motivated by ideology, it is likely that a study of tomatoes in my neighbor’s back yard may not be tiered to the findings of a prior study of the same variety in my back yard because of different street addresses. (Other, Washington, DC - #506.19.40300.XX)

Examples of Programmatic Analysis

Summary

This section includes the following topics: Examples of Programmatic Analysis General; Examples of Analysis Used to Develop, Maintain, and Strengthen Environmental Management Systems; and Examples of Existing Environmental Management Systems Facilitating and Strengthening NEPA Analysis.

Examples of Programmatic Analysis General – Numerous respondents offer examples of the successful use of programmatic analysis. These examples include various efforts by federal and state agencies that respondents feel exemplify best practices in programmatic analysis, and cover a diverse range of activities.

Examples of Analysis Used to Develop, Maintain, and Strengthen Environmental Management Systems – Several respondents suggest that planners should adopt environmental management systems to strengthen environmental analysis, decisionmaking, and implementation. According to these respondents, such systems facilitate comprehensive adaptive management by integrating baseline inventories, forecasting tools, and continual monitoring and reevaluation of effects and mitigation measures. Respondents offer several examples of these systems in practice.

Examples of Existing Environmental Management Systems Facilitating and Strengthening NEPA Analysis – A few respondents discuss the role that they feel international ISO 14001 standards should play in NEPA analysis. Some strongly support integration of these standards into all federal NEPA planning. Others oppose such a move, asserting the lack of any legal mandate to adopt these international standards domestically and fearing loss of national sovereignty.

Examples of Programmatic Analysis General

850. Public Concern: The CEQ Task Force should consider examples of programmatic analysis.

DEPARTMENT OF ENERGY

There are two main categories of issues/activities where DOE has successfully relied upon programmatic NEPA review. Programmatic reviews have proven effective for DOE programs with inter-related activities at multiple sites. Programmatic reviews have also proven effective in site-wide environmental impact statements (SWEIS), which analyze the impacts from the multi-program activities at large DOE sites.

Within its overall mission, DOE has several major programs encompassing major activities at several different sites. Preparing programmatic NEPA analysis is an effective way to determine the environmental impacts of the overall program and provides a consistent basis from which to tier project specific NEPA analysis within the programs. (United States Department of Energy, Washington, DC - #536.15.40100.C1)

In developing the Stockpile Stewardship Program, DOE prepared this programmatic EIS, which provided valuable information on the environmental impacts of the overall program. The programmatic EIS analysis has also provided a strong basis for the tiering of project specific NEPA analyses. Since the programmatic EIS included resource specific analysis, project specific NEPA analyses that tiered from the programmatic EIS were able to simply incorporate the programmatic analysis and discuss any identified divergencies from assumptions/analyses in the programmatic EIS. Thus, the programmatic EIS resulted in efficiencies and prevented duplicative analyses. (United States Department of Energy, Washington, DC - #536.16.40210.C1)

DEPARTMENT OF NATURAL RESOURCES FOREST PRACTICE RULES

For the case of the DNR [Department of Natural Resources] Forest Practices Rules (example #4), the USFWS [United States Fish and Wildlife Service] and NMFS [National Marine Fisheries Services] were involved in co-authoring the Forests and Fish Report . . . which laid out the foundation for future rule development. Although the USFWS and NMFS were not involved in the actual writing of Forest Practices Rules, they were kept informed of developments along the way, including the production of an EIS developed under SEPA [State Environmental Policy Act]. Given that the USFWS and NMFS have been familiar with the Forest Practices Rules from early on in the development stages, it seems that as the project moves through the NEPA process that reviews could be somewhat streamlined.

[Example 4: From a regulatory perspective, DNR has adopted Forest Practices Rules that were written through extensive stakeholder negotiations. In April 2001, DNR published a final EIS under SEPA (a CD of this document is attached) covering potential impacts of the now permanent rules, which included analysis of an adaptive management program. DNR is now in the process of obtaining federal assurances for these rules from the United States Environmental Protection Agency (EPA) under the Clean Water Act (CWA) and from the United States Fish and Wildlife Service and the National Marine Fisheries Services (NMFS) under the Endangered Species Act (ESA). Gaining federal assurances requires that an additional EIS be prepared under both NEPA and SEPA. DNR may elect to fulfill requirements under both NEPA and SEPA by preparing a joint EIS. DNR would appreciate the opportunity to provide additional comments to the NEPA taskforce as we move through this process.] (Washington State Department of Natural Resources, Olympia, WA - #128.7.40200.C2)

NATIONAL MARINE FISHERY SERVICE

Programmatic Supplemental Environmental Impact Statement for Alaska Groundfish Fisheries (PSEIS)
Much of NMFS' NEPA experience under the Magnuson-Stevens Fishery Conservation and Management Act has historically focused on the preparation and implementation of Fishery Management Plans, Fishery Management Plans amendments, and related actions. In the late-1970s and early-1980s, when many of the Fishery Management Plans were first prepared, an EIS was sued to evaluate each Fishery Management Plans. Each Fishery Management Plans could have been labeled a

“program” and its EIS considered a programmatic EIS if the concept of programmatic EISs was better understood and utilized at that time. Every subsequent Fishery Management Plans amendment required either an EA or supplemental EIS as part of its supporting documentation. It is now the common understanding of NEPA practitioners that a PEIS has a shelf-life of about 5-10 years, after which sufficient changes have likely occurred in the physical/biological/economic environment or in the regulatory environment to warrant an updated agency review. In the case of Fishery Management Plans this involves a review and updating of the NEPA environmental analysis for the Fishery Management Plans management measures as well as for fishing in the managed fishery. The updated environmental analysis should take into account the full history of the Fishery Management Plans, including all of its amendments and other related regulatory actions (such as framework actions), should assess cumulative impacts of regulatory and fishery changes over time, and should perform the analysis in the context of current agency management policies. . . . While still a work in progress, this project has, and is, setting new National Marine Fisheries Service standards for NEPA compliance. This PSEIS is noteworthy for the following reasons: It is the first programmatic PEIS prepared by National Marine Fisheries Service; it is the first PEIS that examines past, current and potential management of commercial fisheries in terms of both management policies and management actions; and it is the first National Marine Fisheries Service PEIS that presents alternatives as management frameworks to accommodate the dynamic nature of the resource, the uncertainties associated with the effects of fishing, and the ever changing needs of the fishing industry (National Oceanic and Atmospheric Administration, Washington, DC - #637.37.40200.XX)

USDA FOREST SERVICE

During the late 1980s, California central Sierra forests were experiencing significant insect epidemics. The Eldorado National Forest conducted a programmatic EIS for insect infestations that considerably reduced future NEPA time on individual projects. They became the only forest in Region 5 that met the Congressional expectations. (Placed-Based Group, Sacramento, CA - #522.25.40220.C2)

USDA APHIS

A successful example cited by members is the Rangeland Grasshopper and Mormon Cricket Suppression Program Final Environmental Impact Statement-2002 that was prepared by the Animal Plant Health Inspection Service (APHIS). This Programmatic EIS was developed so that all federal agencies can tier to it as they prepare their site-specific EAs. It was suggested that a similar, single unified National Programmatic EIS for Invasive Plant Management be created for use by all agencies. This would help solve the problem of inconsistent requirements between agencies, it would serve to balance the conflicting biases that exist between different agencies and it would eliminate duplication of efforts within the federal government. (Other, Washington, DC - #585.10.40300.XX)

EGLIN AIR FORCE BASE

At Eglin AFB, programmatic documentation has provided numerous benefits. First, it has streamlined the environmental approval process for individual mission activities. Second, it has supported a holistic view of the base’s operations for the first time, allowing planners to better understand potential cumulative effects from on-going missions. This understanding will hopefully allow the base, for example, to better plan for range sustainment, which is critical to sustaining access for war fighters to the air, land, and water ranges they need to test and train as they will expected to fight. Finally, these programmatic documents have elevated the awareness of the senior military leaders who are responsible for management and decision-making. (United States Air Force, Washington, DC - #525.15.40100.C1)

SHEPPARD AIR FORCE BASE

A programmatic analysis was prepared for Sheppard Air Force Base (AFB) in Wichita Falls, Texas, that assessed the impacts of development and use of the installation to its full potential (maximum capacity) based on existing facilities and available unused land on the installation. The Future Land Use Plan of the General Plan was the basis for projecting the maximum physical plant expansion. The existing and potential facilities provided the basis for determining the maximum level of activities associated with maximum development. The programmatic analysis of the defined maximum capacity (in terms of facilities, people, and activities) of the installation has allowed quick, in-house tiered analyses of several proposals that would have otherwise required repetitive environmental assessments prepared by

contractors. As new proposals are identified, the NEPA program manager first determines what project-specific and site-specific aspects of the project are not accessed in the programmatic analysis. The manager then prepares a tiered analysis referencing the applicable portions of the programmatic analysis. (United States Air Force, Washington, DC - #525.17.40210.C1)

ARMY TRANSFORMATION PROGRAM

The Army Transformation Program is a classic example of programmatic analysis and subsequent tiered analyses of which CEQ is aware. Following completion of a PEIS, the decision was made to implement a phased, synchronized, multi-year program of transformation throughout the service, with certain early actions at designated installations. Tiered, site-specific analyses addressing program implementation at these installations are currently underway. (Business, Fairfax, VA - #520.11.40100.C1)

FEDERAL COAL MANAGEMENT PROGRAM

We applaud the use of tiering in the NEPA process and encourage its use to the extent that resource protection or mitigation is maintained. Examples in this concept first became apparent to the State of Utah in the 1980s when all of the coal regions in the state were involved in both regional and site-specific analyses for the Federal Coal Management Program. This activity involved coal leasing as it was being restarted in response to increased energy demand. The regional NEPA analyses enabled the site-specific analyses to withstand scrutiny, and leasing was somewhat expedited in the process. We see no reason why this approach cannot be utilized in other natural resource areas—especially given the site-specific permitting that must be done before a surface disturbing activity is conducted. (Utah Department of Natural Resources, Salt Lake City, UT - #526.4.40210.XX)

NATIONAL SPATIAL DATA INFRASTRUCTURE

About the only example I can think of is the National Spatial Data Infrastructure and similar initiatives, providing base cultural data to multiple governmental agencies. (Individual, Katy, TX - #192.1.40210.C2)

WASHINGTON DEPARTMENT OF TRANSPORTATION

WSDOT transportation projects include highway construction in urbanized areas, such as the 30-mile corridor of I-405 through Seattle Metropolitan Area. WSDOT, FHWA and other joint lead agencies chose a programmatic, tiered EIS to evaluate improvements to that heavily traveled corridor over a 10- to 20- year timeframe. Bull trout (managed by USFWS) and steelhead and other salmon species (managed by NMFS) may be affected. NMFS and USFWS actively participated with the technical advisory team consulting on the EIS. However, because the level of complexity for ESA analysis was so much higher than required by FHWA or other federal and state agencies, NMFS and USFWS agreed not to formally consult under ESA Section 7 until subsequent “project-level” NEPA documents are prepared. (Washington State Department of Transportation, Olympia, WA - #551.12.40200.C1)

NEW YORK/NEW JERSEY COMPREHENSIVE PORT IMPROVEMENT PLAN

A good example of a type of issue that best lends itself to programmatic analysis is the current formulation of the New York/New Jersey Comprehensive Port Improvement Plan (CPIP). In order to help avoid duplication of tiered analysis, the strategy is to develop the CPIP EIS early and in parallel with the CPIP Plan, so that both documents will compliment each other. This process should help avoid excessive tiering following development of the CPIP Plan. (Port Authority of New York and New Jersey, New York, NY - #457.6.40100.C1)

LAND USE TRANSPORTATION AIR QUALITY PROJECT, PORTLAND 2040, AND ENVISION UTAH

Better environmental stewardship could be a product of a tiered NEPA process that undertook relatively fewer but far more comprehensive reviews of highway projects, with more effective consideration of secondary, indirect and cumulative impacts, such as induced land use and travel effects, using state-of-the-art analysis tools. Combining a number of smaller corridor-level NEPA studies of proposed road expansions into a larger sub-regional or regional NEPA analyses of alternative transportation investments, management and pricing strategies, and growth management plans could reveal a much wider array of effective demand management, transit investment, system management, and partial build

scenarios that could avoid major adverse impacts that typically result from major highway system expansion schemes.

Such approaches can provide effective tiered analysis to inform later corridor level evaluations of detailed project-level alignment alternatives and mitigation strategies. With care, products of state-of-the-art planning practices with exemplary public involvement should be usable in partial satisfaction of NEPA requirements. Oregon has pioneered many of these state-of-the-art planning practices and public involvement initiatives in the U.S., with examples such as the LUTRAQ study of the Western Bypass around Portland and the Portland 2040 Plan initiatives, discussed above, with attached documentary examples. Other regions, such as the Salt Lake City area, have also begun to take steps toward this end, exemplified in the Envision Utah process, which is documented in two attachments to these comments, providing another excellent example of integrated comprehensive evaluation of alternative transportation and land use scenarios that could support an effective first tier NEPA review for major transportation investments. (Preservation/Conservation Organization, Washington, DC - #535.15.40100.XX)

CATEGORICAL EXCLUSIONS

Categorical exclusions are the obvious outstanding example of this system. They can be applied to small timber sales, salvage sales, fences, prescribed fire, and firewood harvest. There is almost no variation between these projects, so programmatic analysis has a self-evident set of benefits. (Bob Cope, Commissioner, Lemhi County Board of Commissioners, Salmon, ID - #70.17.40200.C2)

Examples of Analysis Used to Develop, Maintain, and Strengthen Environmental Management Systems

851. Public Concern: The CEQ Task Force should encourage agencies to use environmental management systems.

TO IMPROVE IMPLEMENTATION OF NEPA DECISIONS

An EMS [Environmental Management System] can add value to a NEPA analysis by focusing on implementation aspects of ongoing operations, monitoring environmental performance, requiring audits and corrective actions, and assessing the effectiveness of the management system elements needed to implement the program decisions made in the NEPA analysis. In short, an EMS can help improve the implementation of NEPA decisions. (United States Department of Energy, Washington, DC - #536.19.40230.C2)

852. Public Concern: The CEQ Task Force should consider features of effective environmental management systems.

BASELINE INVENTORY, ANALYSIS OF TRENDS, AND CONTINUAL AVOIDANCE OR MITIGATION OF ADVERSE EFFECTS

Environmental management systems (EMS's) can take many forms, but to be effective must provide mechanisms for: (1) developing a sound baseline inventory of environmental resources; (2) assessing, measuring and forecasting critical trends and issues affecting resource systems; and (3) continual reappraisal of how adverse impacts can be avoided or mitigated. For example, to help accelerate NEPA reviews or transportation projects while enhancing environmental stewardship, the Oregon Department of Transportation has established memoranda of understanding with natural resource agencies, undertaken post-project audits of environmental performance, and is funding three Oregon Fish and Wildlife staff and one U.S. Fish and Wildlife staff person, as well as the state land use agency and related planning efforts. (Preservation/Conservation Organization, Washington, DC - #471.33.40232.XX)

853. Public Concern: The CEQ Task Force should consider examples of good programmatic analysis used to develop, maintain, and strengthen environmental management systems.

DEPARTMENT OF ENERGY

An example of integrating the EMS and NEPA processes can be found at DOE's Strategic Petroleum Reserve (SPR), which stores oil in underground salt domes in Louisiana and Texas. When it developed its EMS, it had a pre-existing framework for evaluation of new projects and activities: the DOE NEPA process.

As part of its EMS, the SPR identifies environmental aspects through two specific processes: the Engineering Design Review process and the Environmental Program. The Engineering Design Review process addresses activities that result in a change to the SPR configuration baseline. This may entail a change or upgrade to an existing system, addition of an entirely new system, or deletion of an obsolete system. Each of these configuration changes presents an opportunity for a new environmental aspect and corresponding impact, with the related need for analysis in order to adequately plan for them. The NEPA process also requires evaluation of such projects for impacts, best alternative, and appropriate level of action. The SPR's Design Review and NEPA processes are then congruent, and as such offer an opportunity for efficiency through shared processes in identification and maintenance of environmental aspects. A similar process is employed for the Environmental Program for day-to-day activities. (United States Department of Energy, Washington, DC - #536.20.40220.C2)

U.S. NAVY

In 1995, the Commander-in-Chief, U.S. Pacific Command (USCINCPAC) identified a need to evaluate the environmental impacts of ongoing and proposed military training land uses concerning military training in the Marianas. Adopting a programmatic approach, the EIS for all future proposed military training in the Marianas was completed in May 1999. Under this approach, covered future training events would not need to be re-analyzed before each exercise; however, new or substantially different events would have to be examined to determine whether there was a need to supplement the EIS.

Efficiencies gained were:

- (a) Incorporating site-specific training orders
- (b) Streamlining the process of planning training exercises
- (c) Ensuring that necessary mitigation would be implemented
- (d) Identifying whether or not to continue to use certain lands for future training
- (e) Identifying whether or not to adopt new training proposals
- (f) Identifying specific training activities which are suitable for specific lands
- (g) Mitigation required to offset training impacts on specific training lands.

An environmental management system evolved from this effort. A Marianas Training Plan (MTP) was then developed covering five bi-annual training evolutions over a 10-year-period. The EIS then assessed the environmental impacts of the proposed training in the MTP. (United States Navy, Washington, DC - #568.16.40220.C2)

NEW YORK STATE DEPARTMENT OF TRANSPORTATION'S ENVIRONMENTAL INITIATIVE

New York State DOT's Environmental Initiative includes environmental management system features. The DOT does environmental work in support of its corporate environmental ethic. This proactive and cooperative approach includes environmental agencies, groups, and affected communities and strengthens NEPA documents by ensuring that the DOT designs projects that minimize adverse effects. It employs context-sensitive designs to both meet transportation needs and protect or enhance natural resources. Design features that mitigate unavoidable adverse impacts to the environment are incorporated into capital and maintenance projects. For additional details, see: http://www.fhwa.dot.gov/environment/strmlng/env_exc.pdf (United States Environmental Protection Agency, No Address - #299.30.40210.C2)

Examples of Existing Environmental Management Systems Facilitating and Strengthening NEPA Analysis

854. Public Concern: The CEQ Task Force should consider examples of existing environmental management systems facilitating and strengthening NEPA analysis.

DEPARTMENT OF DEFENSE PEIS FOR TRANSFORMATION

The Army's PEIS for Transformation contains information on how the agency envisions using EMS and adaptive management in the implementation of that program. Site-specific, tiered analyses are currently underway that will contain installation-specific provisions for EMS and adaptive management in conjunction with program implementation. (Business, Fairfax, VA- #520.12.40200.C2)

DEPARTMENT OF THE NAVY

A Programmatic Environmental, Safety, and Health Evaluation (PESHE) document for weapons deployment is designed to identify, access, and mitigate risks in six environmental and occupational safety/health categories; NEPA, Compliance, Safety and Health, Hazardous Materials Management, Pollution Prevention (P2), and Explosives Safety. The processes used in support of the PESHE (e.g., development of a specific NEPA Strategy to identify requirements throughout the life cycle, screening candidate materials for potential impacts, specific pollution prevention initiatives, etc.) provides a solid mechanism to identify potential concerns and specific program related data necessary for supporting NEPA analyses. (United States Navy, Washington, DC - #568.15.40200.C2)

IDAHO NATIONAL ENGINEERING AND ENVIRONMENTAL LABORATORY

I believe that Idaho National Engineering and Environmental Laboratory (INEEL) has a good case study showing how to successfully integrate Environmental Management Systems (EMS), Integrated Safety Management Systems (ISMS), and processes to implement the National Environmental Policy Act (NEPA). I am responding to the Federal Register Notice for the NEPA Task Force, Study Area C (Programmatic Analysis and Tiering), Item #2 (Environmental Management Systems). On June 17, 2002, NSF International Strategic Registrations, Ltd. registered INEEL's EMS to ISO 14001. In addition, the INEEL is ISMS certified. The INEEL was also the first Department of Energy (DOE) Laboratory to achieve Star status under the Voluntary Protection Program (VPP). The INEEL decided early in the development of the EMS to seek ISO 14001 certification and to integrate it with ISMS and the NEPA process. Many of the systems put in place to support ISMS also support the EMS and meet the requirements of ISO 14001, such as those related to training, records, documents, and emergency action.

The INEEL operates nuclear and non-nuclear facilities located in southeast Idaho for the DOE and is responsible for: conducting research and development, spent nuclear fuel management, waste management, and environmental restoration. The INEEL generates radioactive, hazardous mixed, and industrial wastes, and releases effluents to the air, water, and soil in the course of conducting business. We developed an EMS founded on the proper identification and understanding of these activities and the environmental aspects and environmental impacts associated with them. The EMS integrates environmental protection, pollution prevention, and regulatory compliance into work planning and execution throughout all work areas as a function of the "Integrated Safety Management System" (ISMS). We developed the EMS program elements to integrate with the five core functions of the ISMS and the elements of the ISO 14001 standard. The EMS provided effective protection to workers, the surrounding communities and the environment through implementation of the ISMS, at the same time meeting operating objectives and compliance with regulations. Finally, during the development of the EMS, the INEEL recognized the similarities between EMS and NEPA values, and worked to integrated the NEPA process and the EMS.

The following Internet address will give you access to an INEEL ftp site containing the documents listed below. Once at the site, open the folder called "Outgoing," then open the folder called "CEQDocs." You can then copy these documents to your own system. These documents describe the relationships; that is, the integration of the EMS, ISMS systems and NEPA process discussed above (see description of

documents below). I suggest that you read the paper first to understand the process we went through to create an EMS and integrate it with existing systems, such as NEPA. INEEL FTP ADDRESS: ftp://ftp.inel.gov/ (Individual, No Address - #205.2.40230.C2)

WASHINGTON DEPARTMENT OF TRANSPORTATION

WSDOT is developing an EMS for its programs and operations. Ways that the EMS will facilitate and strengthen NEPA analysis include:

-Better integration of WSDOT's environmental compliance efforts with the planning and design activities for new transportation projects. This will improve the flow of information into NEPA documents and lessen needs for environmentally-driven rescopes and redesigns in the course of project development.

-Improved compliance monitoring and reporting that will facilitate transparency for other agencies and the public about WSDOT's performance on environmental obligations and responsibilities. This will strengthen the atmosphere of trust and collaboration in which the NEPA process is performed.

More effective information management and document control on environmental matters. This will allow less expensive and more consistent preparation on NEPA documentation across the state, facilitate independent review of technical reports, and support the expedited review of draft documents. (Washington State Department of Transportation, Olympia, WA - #551.16.40220.C2)

855. Public Concern: The CEQ Task Force should adopt ISO 14001 as the national standard for all NEPA work.

ISO 14001 must be adopted as the national standard for all NEPA work. I can't provide examples of programmatic analyses here, but I am a firm believer that the ISO 14001 standards should be followed by every federal agency. (Individual, Washington, DC - #58.1.40231.C2)

856. Public Concern: The CEQ Task Force should not adopt ISO 14001 as the national standard for all NEPA work.

[C2] NEPA is an American Law for American people. The total process should be American and not influenced or guided by any international organizations such as the ISO, International Organization for Standardization. What is the legal or legislative authority for EPA to use guidance from the ISO and/or any other international organization? (Individual, Huachuca City, AZ - #372.26.40231.C2)

Barriers to Effective Use of Programmatic Analysis

Summary

Among those respondents who express support for the concept of a multi-level process of programmatic and subsequent project level analysis in principle, some feel that barriers remain which often prevent its effective use in practice. Some assert that inadequate cumulative effects analyses are a common flaw that diminishes the value of programmatic planning. Others feel that information overload makes this broader level of analysis impractical. Some respondents believe that agencies often postpone addressing significant effects until the last minute in the programmatic planning process, leading to poorer outcomes and lack of meaningful public review.

Tiering to programmatic documents is often ineffective due to the length of time it can take to finish the planning process, contend some respondents. They argue that the time lag between programmatic and project level planning means that programmatic analyses are frequently too stale to be relevant, thus creating a ripple of poor information quality throughout subsequent tiered project-level plans. Some federal agencies and timber industry representatives observe that this means that site-specific project analysis and decisions cannot proceed until out-of-date

programmatic documentation is corrected, delaying projects. “This is analysis paralysis at its worst,” writes one timber industry representative. Time delays during the analysis process also trouble other respondents. Without a regulatory mandate to implement resource protective measures in the interim, some preservation/conservation groups charge that unacceptable levels of environmental effects may occur during the time lag in determining management direction for activities such as recreation.

One state agency confronts inconsistencies between broader scale NEPA programmatic analysis and the higher degree of detail required for ESA Section Seven compliance. To remedy this, the agency requests better coordination of legal requirements under these two laws and feels that preparation of a more detailed programmatic NEPA analysis may be appropriate in these cases.

857. Public Concern: The CEQ Task Force should address barriers to effective use of program analysis.

LACK OF ADEQUATE CUMULATIVE EFFECTS ANALYSIS

The Unfulfilled Promise of Cumulative Effects Analysis

Programmatic analysis and tiering can be further hampered by inadequate cumulative effects analysis. The Bitterroot National Forest BAR provides a good example for this problem too. The Bitterroot BAR Final EIS acknowledged that there would be significant cumulative effects without in fact providing cumulative effects analysis. The FEIS divided the Bitterroot National Forest bull trout population into four distinct geographic regions (Blodgett, Skalkaho-Rye, East Fork Bitterroot, and West Fork Bitterroot). It then divided each geographic region into smaller drainages so that each region encompassed dozens of streams. The FEIS then discussed potential impacts to individual stream segments (and by association bull trout subpopulations) but at no point did the FEIS analyze cumulative impacts for each of the 4 sub-regions, the greater BAR project area, the Bitterroot National Forest, or the Columbia River DPS.

Although the FEIS recognized the potential of negative cumulative effects to fisheries within the planning area, it concluded that the cumulative effect of sediment on bull trout habitat and populations would likely be insignificant in all streams, despite contradictory information within the FEIS and the BO.

Unfortunately, incomplete, inadequate, or inexistent cumulative effects analyses are all too common in the NEPA documents we review. This problem has long plagued agencies responsible for preparing NEPA documents, despite recognition by scientists, the courts, and the CEQ itself. (Preservation/Conservation Organization, Eugene, OR - #96.1.40300.F1)

Cumulative impacts to land use represent another difficult issue encountered by transportation projects during NEPA. Washington State has a strong, locally-driven growth management planning framework. A tiered NEPA document can sometimes be an appropriate mechanism to address issues such as land use changes and cumulative impacts. However, not all transportation projects are of sufficient magnitude to warrant a tiered approach. When a tiered approach is not appropriate, WSDOT struggles to meet requests from resource and regulatory agencies to address cumulative impacts and land use issues. Our state law vests decisions on these issues in local government land use planning. Transportation projects cannot oust the judgment of local policy-makers. A method to resolve this source of conflict is not clear. We would welcome efforts by the Task Force to develop and offer potential solutions to this dilemma. (Washington State Department of Transportation, Olympia, WA - #551.14.40100.C1)

The Lassen, Plumas and Tahoe National Forests prepared a programmatic EIS for the Quincy Library Group Act Fuels Reduction pilot project, a large project spanning over 300,000 acres of National Forest. Subsequently, the various forests have prepared site-specific DFPZ project EAs, which tier to the larger EIS. However, the flaws and omissions stemming from the programmatic analysis have simply been repeated in the site-specific EAs. Namely, the EIS failed to evaluate the long-term effects of

maintaining, or failing to maintain, the constructed DFPZs and the resultant potential use of herbicides or the resultant increase in fire risks due to understory vegetative growth. CATs sued the Forest Service for its inadequate analysis in the EIS and won; yet, still the Forest Service has failed to complete the final supplemental EIS as ordered by the Court. Consequently, the site-specific EAs continue to defer to the QLG EIS as a basis for much of their analysis, and ignore the key issue of what happens to these DFPZs when the understory, highly flammable vegetation grows back. The programmatic EIS should have evaluated these issues in the first instance and provided a template for how these issues would be further addressed at the site-specific level. (Placed-Based Group, Arcata, CA - #632.11.40210.C1)

DEFERRAL OF SIGNIFICANT EFFECTS ANALYSIS UNTIL LATE IN THE PROCESS

Unfortunately, too often federal agencies have ignored the benefits of legitimate tiering, or actively subverted the review process for programmatic decisions. A very counterproductive trend is evident towards deferring study of potentially significant impacts until late in the decision process, sometimes well after an agency has become largely committed to a course of conduct. The U.S. Forest Service, for instance, often cites *California v. Block*, 690 F.2d 753, 761 (9th Cir. 1982) in its preamble to programmatic documents, to the effect that NEPA obligations do not attach until an irretrievable commitment of resources is made. This not only misconstrues *Block*, it is flatly inconsistent with the statute, which directs that irreversible and irretrievable commitments of resources be studied “to the fullest extent possible”, 42 U.S.C. [section] 4332, not “at the last moment possible.” Were that directive not clear enough, CEQ’s NEPA regulations address this question of timing directly: “Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts.” 40 C.F.R. [section] 1501.2; see also *id.* At [section] 1501.2(d)(3) (an agency involved with a non-Federal proponent shall similarly “commence its NEPA process at the earliest possible time”). The consequences of agency failure to heed this mandate are serious: less meaningful public participation, poorer integration of environmental factors into decisions, balkanization of decisionmaking, and devaluation of advance planning. (Preservation/Conservation Organization, Washington, DC - #471.20.40200.XX)

INFORMATION BURDEN

Too often we are asked by the agency to provide more and more detailed information, not to make a better decision, but to show more effort and hopefully to reduce the chance for appeals. This is not productive.

In business, if you can obtain 60% of the information, you generally make your decision. We all live in an imperfect world, and waiting for more information does not necessarily lead to better decisions. (Special Use Permittee, Whitefish, MT - #478.5.40300.XX)

CHANGING INFORMATION AND SITE-SPECIFIC CIRCUMSTANCES, AND/OR OUTDATED PROGRAMMATIC ANALYSES

The Forest Service has found that programmatic analysis and tiering has been useful in some circumstances; however, using this approach with programmatic environmental documents can be costly to efficiency and budgets.

We have experience with conducting assessments outside of the NEPA process where decisions are not made, yet the information is available for site-specific decisions. However, the value of these efforts can quickly diminish as information and circumstances change. This same problem exists with programmatic decisions based on environmental documents. This problem is further exacerbated when site-specific decisions and environmental analyses tier to an outdated programmatic decision and document, stopping the site-specific efforts until the programmatic decisions can be refreshed. (United States Department of Agriculture, Washington, DC - #110.8.40300.XX)

Agencies have created too many layers of environmental analysis, which delays the site-specific environmental analysis necessary to ultimately support taking action. Because the programmatic documents take years to prepare, the information in the programmatic EIS is outdated and cannot be used in the project level environmental document. The project level environmental document must then stand on its own analysis, or repeat the inadequate or outdated analysis in the programmatic EIS. This is

analysis paralysis at its worst. We suggest that programmatic analysis over wide areas only make sense when done at the watershed scale and are immediately used to help implement projects. (Timber or Wood Products Industry, Kalispell, MT - #462.5.40100.C1)

Tiering can be a valuable management tool, but it can also be counter-effective when the tiered plan takes years to develop and the primary planning document fails to provide sufficient guidance for protective interim management. Both of these problems have plagued the BLM's management of Utah's San Rafael Swell. Recognizing that unrestricted off-road vehicle (ORV) use was causing significant damage to fragile cultural and natural resources, BLM's Price Field Office developed a resource management plan (RMP) that recommended the creation of a travel management plan (TMP). The TMP was to be completed within two years and would designate ORV routes to minimize damage to resources. Eleven years later no routes have been designated and the entire area is still open to ORVs. In the interim, the status quo ORV policy—which allows ORV users to travel anywhere—has remained in place. (Preservation/Conservation Organization, No Address, - #498.8.40300.XX)

UNCERTAINTY OF FUTURE ACTIONS AND CONDITIONS

Time-consuming aspect of programmatic decision-making is the uncertainty of future actions and conditions associated with broad programmatic decisions. Much time is spent trying to provide detailed effects analyses for these somewhat speculative efforts. (United States Department of Agriculture, Washington, DC - #110.9.40300.XX)

LEGAL RULINGS

Unfortunately, our experience with the programmatic documents is that they are an ineffective tool and cannot serve the purpose for which they were intended, namely to streamline the analysis needed for later projects that tier to the programmatic document. In particular, the Bureau of Land Management's resource management plans and the Forest Service's forest plans were to aid later implementation of projects. However, the Ninth Circuit Court of Appeals in particular, has held that the planning documents cannot be used to support the subsequent projects. See, *Blue Mountains Biodiversity Project v. Blackwood*, 161 F 3d 1208, 1214 (9th Cir. 1998) (Forest Service Forest Plan); *Kern v. Bureau of Land Management*, 284 F 3d 1062, 1072 (9th Cir. 2002) (BLM resource management plan).

The Forest Service has attempted to support the implementation of projects by conducting comprehensive watershed analyses. Because the Forest Service has limited watershed analysis to describing the existing conditions and how the watershed functions, these have not been NEPA documents. Consequently, the ninth Circuit has invalidated the Forest Service reliance on the programmatic watershed analysis. See, *Blue Mountains Biodiversity*, 161 F 3d at 1215 (Forest Service could not rely on Ecosystem Analysis); *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146 (9th Cir. 1998). We strongly believe that the environmental analysis budget and resources are better spent on project rather than programmatic planning. (Timber or Wood Products Industry, Portland, OR - #454.24.40300.XX)

SUSCEPTIBILITY TO LITIGATION

Tiering can be a useful tool but is often a stumbling block in today's litigious environment. Each level of analysis presents a new opportunity for administrative and judicial challenge. "Professional" interest groups will challenge nearly any project-level analysis on the grounds it does not comply with some portion of the relevant programmatic plan. (Recreational Organization, Boise, ID - #90.10.40600.XX)

Appeals of site-specific NEPA analyses should be limited to whether the proposed action is consistent with any applicable land use plan. Similarly, appeals of site-specific NEPA documents should be limited to issues of changes in conditions since the land management plan was adopted and conformity of the site-specific decision to the overall land management plan. Substantive decisions on land management occur at the land management planning level, and it makes sense from an efficiency standpoint that complaints about those decisions be heard at that time and in that process. If that is the case, no one will be denied a right to appeal or to challenge federal land management decisions, since they would be able to do so at the appropriate time. (Business, Washington, DC - #403.18.40300.XX)

As applied to forest land management, tiering has contributed to the abundance of administrative and judicial challenges seeking to halt projects permanently or delay projects until they are no longer of any value. Increasingly, the EIS is prohibitively costly to prepare, can take years to prepare, and in many cases does not withstand judicial scrutiny. CEQ has only provided very vague and open-ended analytical requirements in rules and guidance, leaving it up to judicial interpretation on a case by case basis with no consistent results, other than delay and the termination of the proposed project. (Timber or Wood Products Industry, Coeur d'Alene, ID - #446.5.40300.XX)

INDIVIDUAL AGENCY'S INTERPRETATION

Individual agency's interpretation, policies and procedures with respect to NEPA compliance can be an obstacle for programmatic analysis. (Port Authority of New York and New Jersey, New York, NY - #457.6.40100.C1)

ENDANGERED SPECIES ACT SECTION SEVEN REQUIREMENTS

The relationship between NEPA and ESA must be clarified. The lack of synchronization of information requirements at logical project steps is a particular problem. WSDOT has several cases in which NEPA documents cannot be finalized due to requests for permit-level project design to complete ESA Section 7 consultation.

How NEPA land use and cumulative impact analysis should be scoped and conducted where state and local laws establish growth management requirement is an important, difficult topic.

WSDOT's experience with the use of tiering of environmental impact statements has met with mixed success. A critical issue for WSDOT is that NEPA and ESA are not integrated so as to facilitate the use of NEPA as the "umbrella" for making a determination of effect to an ESA listed species. The level of detail required for ESA consultation with USFWS and NMFS is at a higher level than can be provided in a "tier one" or "programmatic" EIS. (Washington State Department of Transportation, Olympia, WA - #551.11.40100.C1)

We suggest that CEQ provide guidance to improve the integration of ESA with programmatic analysis under NEPA. In order to expedite programmatic and project-level NEPA documents, we support the AASHTO (American Association of State Highway Transportation Officials) recommendation for increased flexibility to develop the preferred alternative to a higher level of detail in the Final EIS. Coordinating the preparation of NEPA and ESA documentation in this fashion would facilitate project permitting and expedite project delivery. (Washington State Department of Transportation, Olympia, WA - #551.13.40100.C1)